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WHETHER THE FURNISHING OF TRADING STAMPS IS A BUSINESS SUBJECTING THE MERCHANT WHO USES THEM TO AN ADDITIONAL BUSINESS TAX.

Since it is the new, unusual and rare questions of law of which the lawyers of the present day desire the most abundant information, we are persuaded that the profession will read with more than ordinary interest the recent decision of the Supreme Court of Georgia, in the case of Hewin v. City of Atlanta, 49 S. E. Rep. 765, dealing with the interesting question of whether the giving of trading stamps is a business subject to taxation.

No business contrivance has excited more bitter opposition on the part of those not able to procure its use as the giving of trading stamps. Legislature and municipal corporations, which so often show an unhealthy tendency to strike down and obstruct any method by which the most progressive members of the community are enabled to outstrip their less ingenious neighbors, have in various ways sought to nullify the advantage of business houses which have adopted the trading stamp. The first effort attempted to strike the supposed evil at its root and eliminate it completely under the guise of the police power. But the courts very soon convinced those responsible for such legislation and those who attempted to enfore it, that no principle of public health or safety was affected in any manner by the giving of trading stamps and that therefore prohibitory legislation of that character could not be justified on the ground that such legislation was a legitimate exercise of the police power of the state.

The next move was to kill the practice of giving trading stamps by prohibitory taxation; for instance, as in the principal case, by imposing an additional tax upon those who furnish trading stamps to their customers on the theory that the giving of such stamps is a business subject to such taxation.

In the principal case to which we have called attention and which deals with the propriety of this latter mode of attack on the trading stamp business, it appeared that there was an agreement between a number of merchants and a corporation, all of Atlanta, Ga., providing that the latter should print the names of the former in its subscribers' directory, and circulate a number of copies of the book in a named city, and that the merchants should purchase of the corporation a number of so-called trading stamps, to be delivered to customers with their purchases (and not to be otherwise disposed of), and by them preserved and pasted in the books furnished by the corporation until a certain number had been secured, when they should be presented to the corporation in exchange for the customers' choice of certain articles kept in stock by the corporation.

The city of Atlanta then passed an ordinance to the effect that any person or corporation who furnish trading stamps as a premium upon the sale of goods should pay an annual license tax of $100, and that in construing such ordinance the furnishing of such trading stamps should be considered and classified as a separate business.

The Supreme Court of Georgia, in denying the validity of this ordinance, announced five propositions of great importance and of wonderful clearness. The court held first that the furnishing of the trading stamps by a merchant to his customers does not constitute a business separate and distinct from that of selling merchandise, but is merely an instrumentality in or an incident to that business, being in its nature incapable of such separate existence as to constitute of itself a business in either a commercial or a legal sense; second, that authority in a municipal charter "to make just and proper classification of business for taxation," and "to classify business and arrange the various busiuess trades and professions carried on in said city into such classes of subjects for taxation as may be just and proper," does not authorize the passage of an ordinance separating from the business of selling merchandise the incident of furnishing trading stamps for the purpose of increasing the sale of merchandise, and classifying the furnishing of such stamps as a separate business, subject to taxation; third, that whether the furnishing of the trading stamps be treated as a gift, or as a part of the contract of sale of the merchandise, which is delivered at the time the stamps are furnished, the furnishing of the stamps does

not constitute a business subject to be taxed under charter authority to classify and tax business; fourth, that the word "business" in a commercial or legal sense, means something done or carried on for a livelihood, profit, or the like; and fifth, that, even if the General Assembly is authorized to impose a tax upon one who gives away his property, the giving away of property is not a business, within the meaning of a charter provision authorizing the taxation of business.

The court in its argument advances the clearest possible objections to the validity of such legislation. The court said: "The questions to be determined, as the case is now presented, are whether the retail merchant, who furnishes trading stamps to his customers under a contract with the trading stamp company, as set forth in the statement of facts, is engaged in a business, within the meaning of the charter of the city authorizing a tax to be imposed upon persons engaged in business, and whether the business is of such a character that it can be disconnected and isolated from the other business of the retail merchant in such a way as to make the retail merchant a member of two classes for the purposes of taxation; that is, a merchant and a furnisher of trading stamps. It is conceded that the trading stamp company is engaged in a business, and the record discloses that it has been taxed, and has paid the tax imposed upon it. But is the merchant who simply furnishes the stamps purchased by him from the trading stamp company, and delivers them according to the contract into which he has entered (that is, to cash customers), in so doing, engaged in a business at all; and, if so, is that business one actually separate and distinct, and legally severable from his business as a merchant, within the meaning of the charter of Atlanta, conferring power and authority to classify businesses for taxation? If the delivery of the trading stamps to a cash customer is purely voluntary as between the merchant and his customer, the transaction being without consideration—a mere gift—then we suppose no one would contend that, in delivering the stamps under such circumstances, the merchant was engaged in a business at all. While the word "business," as used colloquially, carries with it a very broad meaning, still, as used in its legal and commercial sense, it applies only to that in which one engages for the purpose of livelihood, profit, or the like. This idea of business runs through all of the definitions contained in the dictionaries."

The main argument in support of this sort of legislation is that it is justified on the ground that the giving of trading stamps transfers the title to the article which is ultimately exchanged for the stamps and that the consideration for this exchange of title is given at the time of purchase and included in the purchase money, and that this result makes the transaction a sale, and, therefore, constitutes the whole scheme a business. To this ingenious contention the court said: "But it is said that the furnishing of the trading stamp is not a gift; that when the merchant holds out to the world that he will furnish trading stamps to cash customers, such purchasers are entitled to demand the delivery of the stamps, and therefore a cash transaction involves both a sale of the article of merchandise as well as of the stamp; that, while the stamp has no intrinsic value, it is a symbol of that which has value; that the title to the article finally delivered by the stamp company to the stamp collector is really sold by the merchant when the stamp is delivered; and that the merchant would then be practically engaged in selling every character of article which it is possible for the stamp collector to obtain from the stamp company upon presentation of the stampbook. If the stamp is sold with the article with which it is delivered, of course the title to the stamp passes immediately upon delivery, and this would also be true if the furnishing of the stamp were a mere gift. The cash purchaser owns the stamp from the time it is delivered into his possession. But can it be properly said that the title to that which is finally purchased with the stamps passes to the customer of the retail merchant at the time the stamp is delivered? Suppose 100 stamps represent 100 different transactions with 100 different merchants, none of whom are engaged in the furniture business, and upon presentation of the stamps to the stamp company a chair is delivered. Could it be contended that each of these 100 merchants is subject to classification as a dealer in furniture on account of the delivery of this chair;

and, if not, would they all be taxable as joint sellers of some character? We do not think the contention is sound that the title to the article finally selected by the stamp collector passes at the time of the delivery of the stamp, though the title to the stamp does pass, and whatever that is worth—whatever its purchasing power—is the property of the stamp collector.

There was undoubtedly some ill advised decisons which sustain such unprogressive and unconstitutional legislation such as that condemned in the principal case, but in none of the decisions was the argument made that the giving of trading stamps was not a business, but merely a means of advertising. Cases in which such legislation has been upheld on various grounds are as follows: Humes v. Ft. Smith, 93 Fed. Rep. 857; Lansburgh v. District of Columbia, 56 Alb. L. J. 488; Fleetwood v. Read (Wash.). 58 Pac. Rep. 665, 47 L. R. A. 205. Contra, *Ex parte* McKenna, 126 Cal. 429, 58 Pac. Rep. 916.

The court in the principal case in closing its splendid argument says: "In its ultimate analysis, the use of trading stamps by a merchant is simply a unique and attractive form of advertising, resorted to for the purpose of increasing trade. In the strict commercial sense of the term 'business,' it is not a business at all. It is simply a mode or manner of business—an instrumentality or incident of a business. When resorted to for the purpose of increasing the business to which it is annexed, it occupies the same relation to that business as newspaper advertising, circulars, dodgers and the like; and, if the city of Atlanta can classify as a business advertising through the medium of the trading stamp, it can also classify as a business advertising through the journals of the city, or through the medium of a person employed to walk the streets with the sandwich upon which the goods, wares, and merchandise of a merchant are advertised, or the employment of a dwarf who carries upon his shoulder a barrel upon which the wares of a merchant are advertised, and who stops at every street corner and seats himself upon it. These and other methods equally unique have been resorted to, but no one has ever pretended that the merchant, in thus attempting to increase his profits from the sale of his goods, was engaging in a new business, and not simply carrying on the business of selling goods."

NOTES OF IMPORTANT DECISIONS.

WASTE—WHAT IS SUFFICIENT WASTE ON THE PART OF A DOWRESS TO JUSTIFY AN ACTION FOR DAMAGES?—At common law a life tenant, by right of curtesy or dower, was liable to the reversioner for any waste committed, and the penalty was a harsh one,—forfeiture and treble damages. The courts, however, hesitate to enforce so stringent a penalty and virtually nullify the power and force of the law. In the recent case of Roby v. Newton, 49 S. E. Rep. 694, the Supreme Court of Georgia held that under the Georgia Code a remainderman is not entitled to claim immediate possession as a result of the forfeiture of the interest of the tenant for life unless it appears that there has been both permissive and voluntary waste by the tenant, or one for whose conduct he is responsible, and it must also appear that the voluntary waste was committed wantonly, and in a manner evidencing an utter disregard of the rights of the next taker.

And even in case of permissive waste the court surrounds a recovery by the following limitations: "The permissive waste, which, according to our Code, would authorize a recovery of damages, is that resulting from a failure to use the ordinary care of a prudent man for the preservation and protection of the property; and the voluntary waste is the commission of acts which tend to the permanent injury of him who is to take in the future. The tenant for life is entitled to the full use and enjoyment of the property; the only restriction upon this use being that the estate of those who are to follow him in possession shall not be permanently diminished in value by neglecting to do that which an ordinarily prudent person would do in the preservation of his own property, or by doing those things which are not necessary to the full enjoyment of the particular estate, and which have the effect to permanently diminish the value of the future estate. Many things were held to be acts of waste at common law which would not be such in this state. The clearing of land was waste in England, but such is not waste in Georgia, provided the land cleared still leaves the proportion of cleared land to uncleared land such as an ordinarily prudent person would maintain upon his own property. Chapman v. Schroeder, 10 Ga. 325; Woodward v. Gates, 38 Ga. 205; Small v. Slocumb, 112 Ga. 281, 37 S. E. Rep. 481, 53 L. R. A. 130, 81 Am. St. Rep. 50. The feudal system, which furnished the reasons for the common-law rule that a dowress was liable in damages for waste, and which brought about the statutes above referred to applying the same rule to other tenants for life, and imposing harsh penalties not known to the common law, never hav-

ing been of force in this state, the harsh and stringent rules applied in some English cases in determining what was waste not, and never were, suited to the conditions of our people, and therefore never become a part of our law. Therefore our law determines the question as to what is waste by looking alone at the rights of two individuals, one in possession of the estate for a limited time, and the other who is to take after the lapse of that time, without regard to any system of tenures of which the estates in question formed a component part. In England the courts were bound to look, not only to the rights of the individuals who were owners of the estate, but also to the rights of the lord paramount under the system which public policy demanded should be maintained. Therefore under our law the tenant for life must not be harassed and disturbed by the interference of the reversioner or remainderman, unless it be clearly shown that the rights of the latter as the ultimate owner of the property are imperiled by the conduct of the tenant. Dower is favored by the law, and a tenant in dower, of all other tenants, is entitled to the enjoyment of her estate freefrom the undue espionage and intermeddling of the heirs of her husband, or those who claim under them."

PHYSICIANS AND SURGEONS — EVIDENCE OF DEFENDANT'S WEALTH IN ACTION FOR MEDICAL SERVICES.–Some of the medical journals have been complaining of a recent decision by a judge in St. Louis to the effect that a physician is not entitled to charge for medical services in proportion to the wealth of his patient. We have not seen the decision, and know of it only through journalistic reports and criticisms. If, however, the substance of the judge's action is correctly stated he certainly correctly administered the law. In a comparatively recent case in New York, Platt v. Hollands, 85 App. Div. 231, it was held that a man of large wealth may not be required to pay more liberally for the services of a housekeeper, nurse, secretary and companion than a poor man. On this ground the following extract from the charge to the jury was held erroneous:

"And you have a right to take into consideration in measuring these damages (services) the circumstances of the deceased; that is, the amount of property which he owned, his financial, condition becausea man having large financial interests, banking interests, real estate, tenement houses and mortgages, should pay more reasonably and liberally for services of this kind than a poorer person would. You have a right to take into consideration those facts in making up your minds how much money she is entitled to, if she is entitled to anything."

The case was distinguished from Gall v. Gall, 27 App. Div. 173, where "the services were rendered as a confidential agent and personal and business representative, and it was held that the extent and nature of the business which the plaintiff was required to manage was an important factor in determining the value of his services."

We believe that there is considerable misapprehension of legal rights in the medical profession as a class. The writer remembers on one occasion discussing the matter with a prominen physician who stoutly maintained that a doctor should have the right to charge a rich man more than a poor man and who cited a supposed analogy from rates of compensation for legal services which are dependent in part upon the amount involved in the litigation or other business undertaken. The learned gentleman—he was not consciously talking for the fun column—in effect argued that a rich man was not merely a person, but a *res*, that is his importance as a factor in the financial world should be taken into consideration when a professional man was called in to preserve or restore his health, and that the doctor therefore had a moral claim *in rem*, which should be adjusted on equitable principles of salvage.

Of course, in compensation for medical services for a rich man, in like manner in remuneration for legal services to a rich man indicted for crime, his wealth will practically cut a considerable figure. Rich men will naturally employ physicians whose time is intrinsically most valuable, and they will often, in their gratitude for benefit received, add a large bonus to the generous fee which is charged. A physician is prone to overlook the element of gratuity in the transaction and gathers the impression that the person of large means may lawfully be compelled to pay at an exorbitant rate. There is, furthermore, the sentiment in the medical profession that, as doctors are compelled to do a great deal of poorly paid or absolutely charitable work, they should be permitted, when they have a rich patient, to recoup themselves for the general service to society. It is a source of satisfaction that the St. Louis case above referred to has been discussed in the medical journals; it is to be hoped that their editors will grasp the legal situation and correct the unsound views now quite prevalent among their subscribers.

It may not be amiss to repeat what we said on a former occasion:

"In certain classes of actions for damages evidence of the general financial ability of the defendant is competent. In actions for breach of promise of marriage such evidence is admitted, because it bears upon the question of the manner of living and position in society which the plaintiff would have enjoyed if the defendant had fulfilled his contract. So, also, evidence of the reputed wealth of defendants may be admissible on the question of punitive damages in order to letermine the proper amount thereof to be awarded. Sedgwick on Damages, vol. 1, section 385, 8th ed.; Tucker v. Winders, 41 S. E. Rep. 8, and cases cited.

With regard to actions for services, however, proof of the defendant's wealth is clearly illogical and calculated to mislead a jury, unless the quality of the services was characterized by the nature and value of the property, as in Gall v. Gall, *supra*. Neither a doctor, nor a nurse, should be entitled to recover more for services rendered to a rich man, because he is rich than they could exact from a poorer man. Of course definite contracts may fix compensation for services at any amount a rich man is willing to pay. But in suits on the *quantum meruit* there is no sound reason for taking disparities of wealth into consideration, and the recognition of such policy would lead to the mulcting of rich men by unreasonable claimants either in court or out of it." —*New York Law Journal.*

MENTAL DISTURBANCES AND THE CONSEQUENCES THEREOF AS ELEMENTS OF DAMAGES.*

1. *Definition of Damages.*—The definitions we find for the term damages are numerous, but all are similar in thought and principle. It has been defined as[1] "a sum of money adjudged to be paid by one person to another, as compensation for a loss sustained by the other, in consequence of an injury committed by the former," while Prof. Greenleaf says "Damages are given as a compensation, recompense, or satisfaction to the plaintiff, for an injury actually received by him from the defendant. They should be precisely commensurate with the injury; neither more nor less; and this whether it be to his person or estate."[2]

(a) *Elements.*—As is evident from the definitions, the effect of the law is to give in damages, what it calls compensation. The injuries for which compensation was given at common law, have been classed as follows: 1st. Injuries to property; 2nd. Physical Injuries; 3rd. Mental Injuries; 4th. Injuries to family relations; 5th. Injuries to personal liberty; 6th. Injuries to reputation.[3]

(b) *Mental Suffering as an Element.*—Thus mental suffering has long been recognized as an element of damages[4] although there has been much dispute as to whether mental suffering, as distinct from physical suffering, is ever a subject for compensation.

2. *In Actions Arising Ex Contractu.*—It appears that with two exceptions, all cases in which damages for mental suffering are allowed arise *ex delicto*, these two arise *ex contractu*.

(a) *Breach of Marriage Contract.*—The first exception is in the action for damages for breach of a promise to marry. This action is nominally for a breach of contract, but the measure of damages is fixed by rules which do not apply to other actions of contract, with the possible exception of actions on a breach of a contract by a telegraph company to safely transmit and deliver a message.

Damages are awarded upon principles, more commonly applicable in actions of torts.[5] Hence mental suffering is an important element of damages.[6] In fact it forms the most material element—it has been well stated by a learned judge of Maine that the gravamen of the complaint is purely sentimental, being the mental anguish of the plaintiff deserted by her suitor, although the wealth, social position, and family connections of the defendant may also be shown in aggravation of damages.[7] In cases where the seduction of the plaintiff has been accomplished under promise to marry, in arriving at the plaintiff's damage, the jury should take into consideration her pain and mental suffering, and her humiliation in mind.[8]

In connection with the question as to how much the plaintiff has been wounded in her affections, and how great has been her mental suffering, the length of time during which the engagement had subsisted[9] and the abruptness and humiliation with which it was broken, may be shown and considered

* In this paper the writer has attempted to chronicle the law relating to mental disturbances and their consequences as elements of the law of damages. On all mooted questions he has advanced the arguments of each side, as they appear in the books and reported cases; the object being to reveal the law in its entirety, and not to favor any particular theory.

[1] 1 Bouvier's Law Dictionary, 491.

[2] 2 Greenleaf Evidence, secs. 253-4.

[3] Sedgwick on Damages, sec. 39.

[4] Morton v. Shoppie, 3 C. & P. 373; Beach v. Hancock, 27 N. H. 223.

[5] Sherman v. Rawson, 102 Mass. 395; Sedgwick on Damages, pages 210-369; Wilbur v. Johnson, 58 Mo. 600; Southard v. Rexford, 6 Cow. 254.

[6] Wells v. Padgett, 8 Barb. 323; Vanderpool v. Richardson, 52 Mich. 336; Tobin v. Shaw, 45 Me. 351; Kratz v. Frank, 76 Ind. 584.

[7] Hunter v. Hatfield, 68 Ind. 416; Lawrence v. Cook, 56 Me. 187; Sprague v. Craig, 51 Ill. 288.

[8] Wilas v. Bogan, 57 Ind. 453; Sherman v. Rawson, 102 Mass. 395.

[9] Grant v. Willey, 101 Mass. 356.

by the jury in arriving at the amount of damages to be assessed.[10]

(b.) *Breach of Contract by Telegraph Company.*—The second exception to the rule that all cases in which damages for mental suffering are recoverable, arose *ex delicto* is, the giving of damages for the failure to transmit and deliver correctly messages relating to matters involving human affections, such as sickness, death or funeral of a near relation.

The question as to whether damages should be allowed for mental suffering alone, has been the subject of much controversy and judicial elucidation.

The doctrine allowing such damages, is known as the "Texas theory or doctrine," being first adjudicated in a case arising in the state of Texas, in the year 1881. The action in that case was brought against the telegraph company for failing to deliver a message sent to the plaintiff notifying him of the death of his mother. The complaint averred that by the failure to deliver said message, he was unable to be present at the funeral of his mother. There was no element of damages other than mental pain shown at the trial, but the court held that this of itself, was a proper ground for recovery, and this holding has been uniformly followed by the courts of the "Lone Star State."[11]

This "Texas doctrine" has been adopted and followed in other states; among them, Alabama, Kentucky, Iowa, North Carolina, and Tennesee.[12]

The initial case upon this theory, seems to rest in authority on a passage of Shearman and Redfield on Negligence, which is a follows: "Delay in the announcement of a death, an arrival, the straying or recovery of a child and the like, may often be productive of an injury to the feelings which cannot be easily estimated in money, but for which a jury should be at liberty to award fair damages." Back of this passage seemed to be the familiar principle, that for every injury, the law supposes a remedy.

The arguments advanced for and against this rule are numerous, and the weight of authority can best be located by examining into some of the theories. By far the weight of authority among the text writers hold the telegraph companies liable for mental anguish.[13]

The arguments set out by these text writers, and by many able jurists, briefly stated, are as follows:

(1) A telegraph company is a *quasi*-public agent, and as such, should exercise the extraordinary privileges accorded to it with diligence to the public. It is notified by the wording of the telegram, that it is essential that it be delivered promptly, "it imports urgency on its face."

(2) These messages are of far greater importance than those of a pecuniary nature, hence the telegraph company must, having knowledge of this great importance, accept a liability for all consequential damages arising directly from the company's negligence.

(3) Every infraction of a legal right contemplates some damage and some remedy; therefore, if the company violates its contract, it is liable to some extent, and this being true, it is liable for all damages which are the natural result of the wrongful act, which in this case are mental suffering.

(4) Reason and public policy affirm the right to recover for mental pain, as the rule at common law was adopted before the use of electricity,—it should in accordance with its elastic character adjust itself to the growing needs of civilization.

(5) Mental suffering when accompanied by physical pain, has long been ground for damages,—then there is no reason why mental suffering alone should not be. Physical pain is no more real than mental anguish. They have a common source of right of compensation, which is the violation of the right secured by the contract.

[10] McPherson v. Ryass, 59 Mich. 33.

[11] Western Union Telegraph Co. v. Cooper, 71 Tex. 507; Western Union Telegraph Co. v. Broesche, 72 Tex. 654; Western Union Telegraph Co. v. Beringer, 84 Tex. 38; Western Union Telegraph Co. v. Stephen, 21 S. W. Rep. 148; Western Union Telegraph Co. v. May, 27 S. W. Rep. 760.

[12] Western Union Telegraph Co. v. Cunningham, 98 Ala. 314; Chapman v. Telegraph Co., 90 Ky. 265; Mentzer v. Telegraph Co. (Iowa), 62 N. W. Rep. 174; Wadsworth v. Telegraph Co., 86 Tenn. 695; Thompson v. Telegreph Co., 107 N. Car. 449.

[13] Gray's Communications by Telegraph, sec. 65; Lawsot, Rights *in rem and personam*, Vol. 5, sec. 1970; 2 Thompson, Negligence, 847; Shearman & Redfield on Negligence, sec. 560; Sedgwick on Damages, sec. 804; Sutherland on Damages, sec. 975; Joyce on Damages, sec. 1451; Thompson on Electricity, sec. 424.

(6) There may be a recovery of damages for injury to the feelings where there has been a slight battery, even the mildest laying on of hands by a railroad conductor in ejecting a passenger from his train,—hence there should be damages where an important public duty has been fraudulently or negligently violated, as where a man loses an opportunity to attend the funeral of a loved one, through failure of a telegraph company to deliver a dispatch to him announcing the death.

(7) Mental pain is no harder to measure in damages than physical pain, and this has long been an element of great importance.

(8) If mental suffering is not recognized as grounds for damages, and if no more than the sum paid for transmission of the telegram can be recovered, then a premium will be put upon the telegraph company's negligence, and no man can depend upon the correctness or promptness of a message where the law enforces no responsibility, while if the company knew that it must respond in damages for its negligence, its operators would cease their carelessness and unskillfulness, and there would be fewer law suits in the courts upon this subject.

Such are the arguments advanced by the advocates of the "Texas doctrine," and many of them seem to be based upon sound reason, and fundamental principles of law; while on the other hand the courts opposed to this doctrine, set forth a line of argument, based upon precedent, and supported by the strength of the common law. Briefly stated, the most logical arguments are:

(1) Mental anguish alone was never at the common law a sufficient ground for damages; hence the courts should not create a new principle of damages, if the old principles do not apply.

(2) Such is the duty of the legislative power and not the judicial.

(3) Precedent should not be overlooked, sentiment should not be allowed to carry away judgment, since there can be no competent proof of the money value of mental distress alone,—then it should fail, as in damages for breach of contracts the law knows no measure but a pecuniary one.

(4) Mental suffering alone is not actual damages; it is speculative, and too remote; and if recognized by the courts would throw open the gates to a vast amount of so called results, arising from fright and kindred sensations, thus flooding the courts with endless litigation.

Such is the law as it relates to mental suffering in telegraph cases as found in the books. It might be remarked that there seems to be a tendency of the courts to extend the old principles to the new facts, and such a tendency is especially marked in the law of electricity.[14]

The courts opposing the "Texas doctrine" are Arkansas,[15] Florida,[16] Georgia,[17] Illinois,[18] Kansas,[19] Minnesota,[20] Mississippi,[21] Missouri,[22] New York,[23] Ohio,[24] Wisconsin,[25] Oklahoma[26] and Federal and Circuit Courts of Appeal.

In Actions Arising Ex Delicto.—It may be stated as a general rule in actions arising *ex delicto*, or what is commonly known as torts, that wherever a wrong is committed which will support an action to recover damages, compensation for mental suffering may also be recovered, if such suffering follows as a natural and proximate result.

(a) *Libel And Slander.*—The amount of damages which may be recovered in actions for libel and slander, depends to a very great extent, upon the reputation and character of the parties, and mental suffering is an important element to be considered by the jury in arriving at the amount of damages.[27] A common instruction given to juries in actions of this character is, "you may consider the

[14] Joyce on Electrical Law, secs. 20-42.
[15] Pray v. Western Union Telegraph Co., 64 Ark. 538.
[16] Sunder v. International Tel. Co., 32 Fla. 434.
[17] Chapman v. Western Union Telegraph Co., 88 Ga. 763.
[18] Halton v. Western Union Telegraph Co., 71 Ill. App. 63.
[19] McCall v. Western Union Telegraph Co., 58 Pac. Rep. 797.
[20] Francis v. Western Union Telegraph Co., 58 Minn. 259.
[21] Rogers v. Western Union Telegraph Co., 68 Miss. 748.
[22] Connell v. Western Union Telegraph Co., 116 Mo. 34.
[23] Curtus v. Western Union Telegraph Co., 13 N. Y. App. 253.
[24] Morton v. Western Union Telegraph Co., 53 Ohio St. 431.
[25] Summerfield v. Western Union Telegraph Co., 87 Wis. 1.
[26] Buttin v. Western Union Telegraph Co., 2 Okla. 234.
[27] Willion v. Gait, 17 N. Y. 442; Swift v. Dickenson, 3 Conn. 285.

mental suffering, shame and wounded honor which are brought upon the plaintiff, as a result of the act of the defendant."[28] It has been held that evidence is admissible, in an action by a woman for slander, to show the number and ages of her children, as her mental suffering might be enhanced by the fact that her family would suffer as a result of the slander,[29] but it has been doubted in some states whether the rule could be carried to this extent.[30]

(b) *False Imprisonment.*—In cases of wrongful arrest, or false imprisonment, damages for mental suffering, wounded pride, indignity and humiliation are recoverable.[31] Thus in a case where the wrongful arrest was made in a public place, before a large number of people, the jury was instructed that these circumstances should be taken into consideration in assessing the damages.[32] In a Kansas case the court said "mental pain, distress, and anxiety of mind, are as much and as truly part of the injury for which compensation should be given, as are distress, pain and disease of body, or expenses actually incurred, or loss of time and property, proceeding from the same cause."[33]

This rule has been followed in Indiana. In an action in that state for false imprisonment, the court instructed the jury that they might allow damages for mental suffering, as anguish of mind, sense of shame or humiliation, loss of honor, etc., and that all of these were considered compensatory and not exemplary or punitive damages.[34]

(c) *Seduction and Criminal Conversation.*—These actions may be treated together as they have many points of similarity. In an action for criminal conversation, the husband may recover for the mortification, mental anguish and disgrace resulting from the defendant's act, the damages to be determined in the discretion of the jury, whose verdict will not be disturbed unless the amount awarded appears to have been the result of passion, prejudice, or corruption.[35]

In action for seduction in those states where the female is entitled to recover for her own seduction, the jury may consider the anguish, and injury to her reputation,[36] and where pregnancy ensues resulting in child-birth and sickness, such elements may be considered as producing great mental suffering and s hame.[3]

In case the defendant has given publicity to the seduction, this may be considered as increasing the humiliation and pain.[38] Where the action is brought by the parent, it is technically based at the common law, upon the loss of services, but the father may also recover for mental anguish caused by the wrong.[39]

(d) *Personal, Injuries, Including Ejectment from Railroad Cars.*—In actions for personal injuries, the damages should include an allowance for mental suffering. Where it is attended by physical injury, this rule is well settled.[40] The jury should take into consideration, the character of the injury, whether temporary or permanent, in determining such mental suffering. Some courts even go so far as to hold that such mental suffering will be inferred from severe physical injury, without proof that such suffering ensued.[41]

Where the negligent or wrongful act of one person puts another in a position of peril and thereby causes fear and apprehension in the mind of the latter, but no actual harm results, there is no cause of action,[42] but where,

[28] Shattuck v. McArthur, 29 Fed. Rep. 136; Rea v. Harrington, 58 Vt. 181; Cahill v. Murphy, 94 Cal. 29; Baldwin v. Boulware, 79 Mo. App. 5.

[29] Cahill v. Murphy, 94 Cal. 29.

[30] Windisch Muhlhauser Brewery Co. v. Bacor (Ky.), 53 S. W. Rep. 520.

[31] Gibney v. Lewis, 68 Conn. 392; Stewart v. Maddox, 63 Ind. 51; Yount v. Carney (Iowa), 60 N. W. Rep. 114; Hays v. Creary, 60 Tex. 445.

[32] Fenelon v. Butts, 53 Wis. 344.

[33] Wilson v. Young, 31 Kan. 589.

[34] Stewart v. Maddox, 63 Ind. 58; Koerner v. Oberly, 56 Ind. 284; Harness v. Steele, 159 Ind. 281.

[35] Long v. Bool (Ala.), 17 S. W. Rep. 716; Prettyman v. Williamson, 39 Atl. Rep. 731; Hartpence v. Rodgress, 143 Mo. 623; Smith v. Myers, 52 Neb. 70; Speck v. Gray, 14 Wash. 589.

[36] Gunder v. Tibbits, 153 Ind. 591.

[37] Lawyer v. Fritcher, 130 N. Y. 239; Gemmull v. Brown (Ind.), 56 N. E. Rep. 691; Stevenson v. Belknap, 8 Iowa, 97.

[38] Simons v. Busky (Ind.), 21 N. E. Rep. 541.

[39] Pruitt v. Cox, 21 Ind. 51; Lape v. Esenlerd, 39 N. Y. 229; Lavery v. Crooke, 52 Wis. 612; Riddle v. McGinnis, 22 W. Va. 253.

[40] Vandeventer v. Railroad Co., 26 Fed. Rep. 32; Railroad Co. v. Muldowney, 36 Iowa, 462; Gallagher v. Bouse, 66 Tex. 265; Cooper v. Mulluise, 30 Ga. 146; Railroad Co. v. Morgan, 132 Ind. 430; Railroad Co. v. Newell, 104 Ind. 264.

[41] Brown v. Sullivan, 71 Tex. 470.

[42] Railroad Co. v. Brinker, 128 Ind. 542; Railroad Co. v. Trott, 86 Tex. 412; Wyman v. Leavitt, 71 Me. 227; Railroad Co. v. McGinnis, 46 Kan. 109.

however, the fright or shock causes illness, nervous prostration, or any other physical injury, the original fault is the proximate cause of the injury, and damages may be recovered.[43]

The wrongful ejection of a passenger from a public conveyance is not only a breach of contract, but it is also a tort, hence compensation for the humiliation, insult, and pain put upon him may be recovered;[44] also where a passenger is put down at an improper place,[45] and where one is excluded from a particular car on account of color.[46]

(e) *Prospective Mental Suffering.*—Damages may be recovered for prospective mental suffering.[47] Thus, one may recover for grief, and mortification which will be caused in the future by any serious deformity and disfigurement,[48] but there is some confusion as to this point.[49] Damages for dread of hydrophobia may be recovered by one who has been bitten by a dog.[50]

SUMNER KENNER.

Huntington, Ind.

[43] Smith v. Railroad Co., 30 Minn. 169; Mitchell v. Railroad Co., 25 N. Y. Supp. 744; Oliver v. Town of La Valle, 36 Wis. 592; Lehman v. Railroad Co., 47 Hun, 355; Kline v. Kline, 158 Ind. 603.

[44] Gallena v. Railroad Co., 13 Fed. Rep. 116; Casten v. Railroad Co., 44 Minn. 454; Holdridge v. Railroad Co., 118 Ind. 281; Christison v. Railroad Co., 39 Ill. App. 495.

[45] Stutz v. Railroad Co., 73 Wis. 147; Kaiser v. Railroad Co., 82 Tex. 305.

[46] William v. Railroad Co., 55 Ill. 185.

[47] Matterson v. Railroad Co., 62 Barb. 364; Campbell v. Car Co., 42 Fed. Rep. 484; Spicer v. Railroad Co., 29 Wis. 580.

[48] Heddis v. Railroad Co., 77 Wis. 228; Young v. Railroad Co., 81 Ga. 397; Sherwood v. Railroad Co., 82 Mich. 374.

[49] Hines v. Railroad Co., 45 Ill. App. 299; Campbell v. Railroad Co., 63 Fed. Rep. 396.

[50] Godeau v. Blood, 52 Vt. 251; Warner v. Chamberlin, 30 Atl. Rep. 638.

FOREIGN CORPORATIONS—ACTION AGAINST.

REEVES v. SOUTHERN RY. CO.

Supreme Court of Georgia, January 27, 1905.

A foreign corporation doing business in this state and having agents located therein for this purpose may be sued and served in the same manner as domestic corporations upon any transitory cause of action, whether originating in this state or otherwise; and it is immaterial whether the plaintiff be a nonresident or a resident of this state, provided the enforcement of the cause of action would not be contrary to the laws and policy of this state.

COBB, J.: This was an action in the city court of Atlanta, by a plaintiff whose place of residence does not appear, against a foreign railroad corporation which is doing business in the city of Atlanta. The defendant was duly served with process according to the law of this state. The cause of action alleged is a tort to property committed in the state of Alabama, the tort consisting of an injury to a horse which was being transported from Harrisonville, Mo., to Atlanta, Ga., in a car of the defendant company. The petition did not allege that the contract of transportation was made by any officer or agent of the corporation in Georgia, or that the tort was connected in any way with orders issued by a Georgia officer, or from a Georgia office of the corporation. The court dismissed the petition on demurrer for want of jurisdiction, and the plaintiff excepted.

The fact that a corporation has no existence except in legal contemplation gave rise to the conception that its existence could not be legally recognized outside of the territorial jurisdiction of the lawmaking power which created it, and that, therefore, it was impossible for a corporation to migrate beyond the bounds of its creator. This conception resulted in the court's holding that the corporation could not be sued in a jurisdiction foreign to that which gave it existence. While, under this view, as a matter of theory the corporation did not migrate, yet as a matter of fact its officers and agents did; and contracts were made in its name, and wrongs committed by its officers and agents, in territory far remote from that in which it was supposed to have its only legal existence. Great hardship and inconvenience resulted oftentimes from the application of this rule, which had the effect of compelling those who sought redress for breaches of contract and other legal wrongs against the corporation to bring their actions in the courts of the jurisdiction creating the corporation; the expenses of the remedy in many cases amounting to more than what would have been the fruits of recovery. The recognition of the hardship resulting from this rule brought about a modification of the rule to the extent that, where a foreign corporation located an agent and actually transacted business in a foreign jurisdiction, it so far acquired a residence in that jurisdiction as to make it amenable to the processes of the courts thereof on all causes of action originating within that jurisdiction. The rule was then further modified to the extent that, where the corporation had an agent and was doing business in a foreign jurisdiction, it might be sued upon transitory cause of action by a citizen of the state in which the corporation was thus doing business. And in this county it followed from this rule that, if a resident was allowed to bring this suit, any citizen of the United States would under the Constitution of the United States, have a similar right to bring suit. South Carolina Railroad Co. v. Nix, 68 Ga. 572, 580; Barrell v. Benjamin, 15 Mass. 354; Cole v. Cunningham, 133 U. S. 108, 113, 114, 10 Sup. Ct. Rep. 269, 33 L.

Ed. 538. There are many years and manifold changes in economic conditions between the old rule, which denied the right to sue a foreign corporation *in personam* outside of the jurisdiction of its creation, and the modern doctrine that the question of jurisdiction and suability is not so much one of citizenship as one of finding. See Williams v. Ry. Co., 90 Ga. 522, 16 S. E. Rep. 303; Dearing v. Bank, 5 Ga. 497, 48 Am. Dec. 300. The development of the principle was by gradual steps, and necessarily involved the overturning of many old cases. The case of Bawknight v. Insurance Company, 55 Ga. 194, was decided during the transition period, and before the modern doctrine had been firmly established. It denied the right to sue a foreign corporation on a foreign cause of action. This decision seems to have been followed in Central Railroad Co. v. Carr, 76 Ala. 388, 52 Am. Rep. 339. In the Bawknight Case it is to be noted that the original record shows that the plaintiff was a resident of the state of Florida, and at that time the fact of the nonresidence of the plaintiff was by several courts considered important; some holding that on a cause of action arising in another state a nonresident plaintiff could not sue a nonresident corporation, while others held that it was within the discretion of the court to allow or refuse such right to a nonresident. The true test of jurisdiction is not residence or nonresidence of the plaintiff, or the place where the cause of action originated, but whether the defendant can be found and served in the jurisdiction where the cause of action is asserted. A corporation can be found in any jurisdiction where it transacts business through agents located in that jurisdiction, and suits may be maintained against it in that jurisdiction if the laws of the same provide a method of perfecting service on it by serving its agents. From 1845 to the present time the law of Georgia has provided that service of process necessary to the commencement of "any suit against any corporation in any court," with certain exceptions, which are not material to this discussion, may be perfected by serving any officer or agent of such corporation, or by leaving a copy of the process at the place of transacting the usual and ordinary business of such corporation, if such place shall then be within the jurisdiction of the state in which the suit is commenced. Civ. Code 1895, § 1899. The language of this section is sufficiently broad to authorize the service of process in a suit against a foreign corporation that has a place of doing business in this state. City Fire Ins. Co. v. Carrugi, 41 Ga. 660, 671. There are many cases decided by this court where it either expressly or tacitly recognized that a foreign corporation may be sued in this state *in personam* if lawful service can be perfected upon it. See Selma R. Co. v. Lacy, 43 Ga. 461; Mayor of Macon v. Cummins, 47 Ga. 326; Nat. Bank v. Mfg. Co., 55 Ga. 36; Dahlonega Min. Co. v. Purdy, 65 Ga. 496; Central R. R. v. Swint, 73 Ga. 651; Ala. R. Co. v. Fulghum, 87 Ga. 263, 13 S. E. Rep. 648; Watson v. R. Co., 91 Ga. 222, 18 S. E. Rep. 208; South Carolina R. Co. v. Dietzen, 101 Ga. 730, 29 S. E. Rep. 292; Equity Life Assn. v. Gammon, 119 Ga. 276, 46 S. E. Rep. 100. It is true that in most, if not all, of these cases the action arose in Georgia, and the plaintiff was a resident of this state; but neither of these facts was stressed as being material in any of the decisions, the jurisdiction, where the question of jurisdiction was directly raised, being maintained on the ground that service of process could be had upon the corporation for the reason that it was present in the state when it transacted business there through an agent duly authorized to represent it in reference to the business transacted, and that the statute of 1842 was broad enough to authorize service of process upon foreign corporations by serving the agent who within this state transacted the business of the corporation. A natural person not a resident of this state may be sued in this state if found within its limits, and served with process, although he may be simply passing through the state, and not transacting business of any character within the same. Civ. Code 1895, § 4954. And there is nothing in the law authorizing such a non-resident person to be sued here which makes the jurisdiction dependent upon whether the cause of action against him originated in this state. Presence within the territorial limits of the state gives jurisdiction to its courts, and a non-resident may be brought into court by a service of process in the same manner that a resident would be brought in. In cases of foreign corporations the mere passing through the state of an officer, even though the head officer, would not give the courts of this state jurisdiction of the corporation. Schmidlapp v. Ins. Co., 71 Ga. 246; Associated Press v. United Press, 104 Ga. 51, 29 S. E. Rep. 869; Reynolds Co. v. Martin, 116 Ga. 495, 42 S. E. Rep. 796. A corporation is not always present where its officers are, but it is present in any place where its officers or agents transact business in behalf of the corporation under authority conferred by it. The weight of modern authority seems to support the proposition that a foreign corporation may be sued on a transitory cause of action in any jurisdiction where it can be found in the sense that service may be perfected upon an agent or officer transacting business for the corporation within that jurisdiction, and that the residence of the plaintiff and the place at which the cause of action arose are not material questions to be determined to maintain jurisdiction if the corporation can be found and served. From among the numerous cases relating to this subject we cite the following; Eingartner v. Steel Co., 94 Wis. 70, 68 N. W. Rep. 664, 34 L. R. A. 503, 59 Am. St. Rep. 859; Nelson v. R. Co., 88 Va. 971, 14 S. E. Rep. 838, 15 L. R. A. 583; Haggin v. De Paris, L. R. 23 Q. B. D. 519; Lhoneux v. Banking Corporation, L. R. 33 Ch. Div. 446; Dennick v. R. Co., 103 U. S. 11, 18, 26 L.

Ed. 439; St. Clair v. Cox, 106 U. S. 350, 354, 1 Sup. Ct. Rep. 354, 27 L. Ed. 222; Barrow Steamship Co. v. Kane, 170 U. S. 109, 18 Sup. Ct. Rep. 526, 42 L. Ed. 964; Knight v. R. Co., 108 Pa. 250, 56 Am. Rep. 200. See, also, Reno on Nonresidents, § 44 *et seq.*; Minor's Conflict of Laws, § 192. Of course, the right of either a nonresident or resident plaintiff to sue a foreign corporation upon a foreign cause of action is subject to this qualification: that it would not be against the policy of the state in which the suit is brought to enforce the cause of action arising outside of its jurisdiction. The comity of states would not require the courts of this state to enforce a cause of action when to do this would be contrary to the established policy of the state. Pol. Code 1895, § 9; American Colonization Society v. Gartrell, 23 Ga. 448. Subject to this qualification, foreign corporations may sue in this state on any cause of action, and may likewise be sued, provided they are found and duly served according to law. At common law service upon a corporation could be perfected only serving its head officer, but whether service upon any other officer would be sufficient to bring the corporation into court is a matter to be determined by municipal law. The law of this state permits its own corporations to be brought into court by serving any officer or agent transacting the business of the corporation, and the statute is broad enough to allow service upon a foreign corporation in the same way. The state of Georgia either expressly grants to these foreign corporations the right to do business within its limits, or tacitly permits them to transact business here. They are allowed to open offices in this state, and here deal with our citizens and others who may be temporarily within its limits. The state protects them in the property which they hold. The courts of Georgia are open to them for the enforcement of any claim of any character which they may have against her citizens or citizens of other states passing through this state, subject only to the qualifications above referred to. Can it be said that it is a hard rule, or a violation of any sound principle, that they should be put upon the same footing as to causes action against them as our own corporations are placed upon by the law of the land? The case of Bawknight v. Insurance Company, *supra*, is in direct conflict with the modern authorities, and seems to us to be in conflict with the policy of the state as indicated by legislation which was in existence at the time the decision was rendered; and the reasons given by the learned judge for the conclusions in that case being not at all satisfactory, especially when viewed in the light of the present day, after mature consideration and reflection, we have reached the conclusion that this case should be overruled, and the law of this state, so far as this question is concerned, put upon the sound principles promulgated in the well-considered cases in other jurisdictions above referred to. The record does not disclose whether the plaintiff was a resident or nonresident of the state, but this being now immaterial, and the foreign corporation which is defendant having been found and duly served according to law, the court has jurisdiction of the cause of action stated in the petition, notwithstanding it arose in another state, there being nothing in the cause of action which would make its enforcement contrary to the policy and law of this state.

Judgment reversed. All the justices concur.

NOTE.—*Jurisdiction of Suits Against a Foreign Corporation by Non-Residents on Causes of Actions Arising in Another State.*—The court in the principal case calls attention to a very important extension of the rule permitting foreign corporations to be sued in any state where they have a local agent and a place of business.

The history of this rule is interesting. First, under the common law, a corporation could only be sued in the state by which it was created. Second, the rule was extended to permit a foreign corporation to be sued in any state where they had a local agent by any citizen of such state and on a cause of action arising in said state. Third, the rule was again extended to permit a suit against such a corporation by a citizen of the state in which the corporation was doing business on a cause of action arising in another state. Fourth, the last necessary change was made and now a non-resident may sue a foreign corporation on a cause of action arising outside of the state in which suit is brought and in which the corporation has an agent and is doing business. We are considering in this note the fourth and final extension of this rule

Contracts.—Suppose a contract to be made by a citizen residing in the state of Nevada with a corporation organized in New York. Can such a contract be enforced in the state of Illinois against the corporation by obtaining service on one of its agents lawfully appointed and representing the corporation in that state? That is a contrite statement of our proposition. The courts are divided in their opinion in regard to the proper solution. The earlier decisions hold that such a suit cannot be maintained. Sawyer v. Insurance Co., 46 Vt. 697. But the later authorities have announced the contrary rule and hold that such a suit is a perfectly proper one. Youmans v. Insurance Co., 67 Fed. Rep. 282; Johnson v. Insurance Co., 132 Mass. 434. In Sawyer v. Insurance Co., *supra*, the court justified its holding in the following language: "When this statute was passed (the statute permitting service on agents of foreign corporations), the old law permitted the agents of any insurance company, foreign as well as domestic, to make contracts of insurance in this state, under which causes of action would accrue to the people of the state within the jurisdiction of the state courts. The mischief was, that the jurisdiction of the state courts over these causes of action, would be unavailing, except upon voluntary appearance, for want of power in the courts to compel appearance. The remedy provided was, the requiring of any foreign insurance company making such contract, to keep an agent in the state, on whom service could be made. This would be a full remedy for all that mischief, without requiring such companies to keep an agent here on whom any process for any purpose could be served. There could be no advantage obtained for the people of the state by providing means to give the courts of the sta

jurisdiction over causes of action that accrued out of the state in favor of persons not citizens of the state, against a corporation existing out of the state and it is not to be presumed that the legislature intended to accomplish that purpose, unless that is the necessary result of the enactment. It is more reasonable to suppose that the intention was to provide a method for obtaining jurisdiction over a defendant to a cause of action that the courts had jurisdiction of before, than that it was to provide means for obtaining jurisdiction of a cause of action where none was had before, and of the parties also, by this compulsory appointment of an agent. In this case, the court had no jurisdiction over the cause of action, nor over the plaintiff, otherwise than as she invoked it, nor over the defendant otherwise than by service upon this statutory agent, assuming him to be such. This agent, for the reasons stated, i considered not to have been required by the statute, nor appointed by the corporation, for the purposes of such service of process in favor of a party not a resident, on a cause of action which did not accrue here and which the court has no jurisdiction over; but only for the service of process upon non-resident corporations, to enforce causes of action that the court already had jurisdiction of, which was unavailing for want of jurisdiction of the defendant."

The above argument of the Vermont court contains all that can be said on that side of the case. It is only necessary, to meet that argument, to say that a citizen of a foreign state cannot be denied any remedy which a statute of any other state furnishes to citizens thereof. Thus, in the case of Johnston v. Insurance Co., *supra*, the Supreme Court of Massachusetts says: 'The only question here is whether the law and practice of our courts, which enable a non-resident to sue, upon a debt contracted elsewhere, another non-resident who may be found here, and on whom summons has been actually served, applies to this case. In other words, having summoned the defendant, a foreign insurance company, according to the provisions of the statute, will this court decline to take jurisdiction of an action to recover a sum of money alleged to be due the plaintiff, because the plaintiff is not a resident of this state, and the contract was made, and the property to which it relates is situated, in another state? It is true the statute does not in express terms provide for the maintenance of such action; nor does it prohibit its maintenance The statute was not framed for that purpose; its object is simply to provide for serving upon such companies 'all lawful processes in any action or proceeding' against them. The words, 'all lawful processes in any action or proceeding,' must be held to include all actions which might lawfully be brought against a company thus having a domicile of business in this commonwealth. It is also true that the main purpose of the statute is to secure to our own citizens the benefit of our laws and tribunals in regard to contracts made with foreign insurance companies who do business in this state; and it contains particular provisions which clearly indicate this general purpose. But it is true of all our statutes, applicable to our own citizens, and the security and protection of their rights. We have, however, always extended the privileges of our laws to non-residents, and opened our courts to their litigation, if the defendant can be found here."

Torts.—The same principle is applicable to an action founded on tort as well as on contract, and it has been held that a non-resident may sue a corporation in a foreign state on a cause of action accruing outside of the state where such suit was brought. South Carolina, etc., Co. v. Nix, 68 Ga. 572; Pullman Palace Car Co. v. Lawrence, 74 Miss. 782; Eingartner v. Steel Co., 94 Wis. 70; Herrick v. Railroad, 31 Minn. 11; Morris v. Railroad, 65 Iowa, 727. As in the case of contract, there is one authority that breaks the monotony of the unanimity of opinion and denies that jurisdiction is obtained in such cases. Central, etc., Co. v. Carr, 76 Ala. 388, 52 Am. Rep. 339. The same principles apply in case of tort as in case of contract, so that it will not be necessary to quote from the cases.

JETSAM AND FLOTSAM.

HARVEY STEEL COMPANY V. UNITED STATES.

(In the case of Harvey Steel Company v. United States, the Court of Claims recently rendered a judgment, by a majority of four of the five judges, the majority opinion being written by Nott, chief justice, and a dissenting opinion by Wright, justice. The following lines are dedicated to Mr. Justice Wright.)

That Wright is Wright and Nott is Nott,
Logicians must concede.
That Nott is right and Wright is not,
Four judges have decreed.

That Nott is right and Wright is not,
We all must now agree;
Then Nott is right and Wright is Nott—
The same thing, to a t.

If Nott is Nott and Wright is Nott,
It comes without a wrench
That we have not, if not two Notts,
Five judges on the bench.

If only four, as shown before,
And three agree with Nott,
The judgment is unanimous,
And Wright's dissent is naught.

The knot is not, is Nott not Nott?
But, is Wright right, or not?
Is Nott not right? What right has Wright
To write that Nott is not?
Do *I* do right to write to Wright
This most unrighteous rot?

—*Green Bag.*

THEORY VERSUS PRACTICE.

The meeting in aid of the oppressed tenants had come to a close, and unfortunate Ireland was freed five times that evening. Judge Houlihan presided at the meeting with all his customary grace and polish, and pleas in behalf of the delinquent tenants were urged with great vigor. Barrister Tim Donoghue exhorted the tenants to stand firm, and in a loud voice he expatiated on the cruelty of a landlord to eviet a tenant for merely owing a few yeers' rent. "The sacred coz of Ireland," said he, "has often been jeopareized for lack iv yoonity. Stand firm, pay your patriot agitators, and the dawn iv Irish freedom will soon be at hand. In all ages the heartlessness of landlords has been a synonym for infamy." (Loud applause.)

(Scene: Police Court, next morning. Judge Houlihan on the bench.)

"Your honor," began Lawyer Tim, "I appear for the plaintiff in the case of Murphy against Callaghan."

"What kind of an action is it?" inquired his honor.

"A summary process to recover land, that is, agin a tenant for the unlawful withholdin' iv a tinament," replied Lawyer Tim.

"Has the defindent any counsel?" further inquired his honor.

"No, yir honor, I have a bedridden husband, and can't afford to hire an attorney," meekly replied Honora Callaghan, the defendart.

"But this is a coort iv justice, not mercy, madam. an' you must understhand that coorts are not public charities or eleemosynary institootions," angrily rejoined his honor.

"I know that, yir honor, but if I could only have a little time, I would settle the rint," humbly responded the old lady.

"The same old story that I've heerd during the twenty-five years I've been on the binch. Guilthy people let on to be exthroardinarily innocent intirely. Even if people don't do the crimes they're sent to prison for, surely they commit other crimes they niver was punished for. It's shocking intirely, the ignorance of litigants; how can a judge do anything but his jooty; he can't be ginerous wid another man's property an' forgive rint he has no moral, legal or scriptural claim to; Mr. Donoghue, prove your notice, and thry your case accordin' to the code," sharply replied his honor. This was done, and the case was accordingly closed.

"Honora Callaghan," began his honor, in summing up, we rade in Holy Writ, the poor ye have always wid ye, but that was before the days iv trusts, an' before the wimmin folks were taught the great American art iv separatin' a man from his money. People who pay their rint want the front doore steps paved wid diamonds, or else they'll move, an' those that don't pay or can't pay want the docthrins of true Christian charity administered to them. Now I can't be charitable wid another man's money, because the masther in the vineyard forbids it. My painful duty compels me to grant a decree for the plaintiff, an' give judgment for six dollars' rint, an' execution to be issued in forthy-eight hours.

"The coort stands adjourned."—*Canadian Law Review.*

COMMON LAW TREATMENT OF PRISONERS WHO STAND MUTE.

(Excerpt from Editorial Notes of John F. Geeting.) —American Criminal Reports 659.

The Old English Practice.—Under the old English law, if a prisoner stood mute and failed to plead to the indictment, a jury was impaneled to determine whether his conduct came from obstinacy or from a natural impediment. According to Blackstone (Book 4, p. 325), if the prisoner was found to be obstinately mute, and the indictment was for high treason, it was settled that his silence was equivalent to a conviction, and that judgment and execution should follow, which that author claimed applied to the lowest species of felony (petit larceny) and misdemeanors; but the same author says that upon appeals or indictments for other felonies, or petit treason, according to the ancient law the prisoner was not deemed convicted, but, because of his obstinacy, should receive "the terrible sentence of penance, or peine." A respite for a few hours was permitted the prisoner, the sentence being distinctly read to him, "that he might know his danger; and, after all, if he continued obstinate, his offense was clergyable; he had the benefit of clergy allowed him, even though too stubborn to pray it." Blackstone says that the punishment "was purposely ordained to be exquisitely severe, that by that means it might rarely be put in execution." He describes the punishment as follows (p. 327):

"That the prisoner be remanded to the prison from whence he came, and put in a low, dark chamber, and there be laid on his back, on the bare floor, naked, unless decency forbids; that there be placed upon his body as great a weight of iron as he could bear, and more; that he should have no sustenance, save only, on the first day, three morsels of the worst bread, and, on the second day, three draughts of standing water that should be nearest the prison door; and in this situation this should be alternately his daily diet till he died, or (as anciently the judgment ran) till he answered."

Thorley's Case (Kelyng, 27.)—Kelyng, in reporting the proceedings at the Newgate sessions in the fourteenth year of Charles II., gives the following report (the spelling, capitals and italics are as they appear in the report):

One stand Mute, Thumbs tyed together with Whipcord.

At the same Sessions, George Thorley being indicted for Robbery, refused to plead, and his two Thumbs were tyed together with Whipcord, that the Pain of that might compel him to plead, and he was sent away so tyed, and a Minister perswaded to go to him to perswade him; And an Hour after he was brought again and pleaded. And this was said to be the constant Practice at Newgate.

A New England Victim.—It is said that during the prosecutions in New England for that fictitious crime of witchcraft, a respectable citizen, being so accused, well knowing that by reason of the excitement and religious fervor of the times, a plea of not guilty and trial would result in a conviction, with confiscation of property; and that the same judgment would follow a plea of guilty, he refused to plead, thereby preventing a conviction, and enabling his family to retain the property. The court ordered that he be pressed, because of his obstinacy. During this process the dying victim's tongue protruded, which so shocked the sensibilities of the devout sheriff that he pushed it back with his cane.

LIABILITY OF LESSOR FOR INJURIES TO LESSEE'S SERVANT ARISING THROUGH NEGLIGENCE OF LESSEE.

The Supreme Court of Illinois, in a recent decision (Railway Co. v. Hart, 70 N. E. Rep. 654), announced a general rule making a lessor railroad company liable to an employee of a lessee railroad company for a tort arising solely through the lessee's negligence. It is difficult to see how such a conclusion could have been reached in the absence of a statutory enactment making lessor companies liable in such cases unless expressly absolved from liability. The reasoning of the learned court, in handing down the decision, is not so convincing as that in the dissenting opinion. Proceeding upon the assumption that the employee of a railroad company stands in the same relation to the railroad company as does the general public, it attempts to fix the lessor's liability partly upon the old maxims, "*Qui facit per alium facit per se*" and "*Respondeat superior*;" and partly upon principles of public policy.

It is conceded that the lessor company would be liable for a tort committed by the lessee company upon a stranger, and also for a tort committed upon

an employee of a lessee under circumstances where the responsibility might rest fairly upon the lessor, as for example, where the tortious injury was the result of a defect in the road-bed. But neither of these points is involved in the Illinois case. The only question in that case is as to the liability of the lessor to an employee of the lessee for an injury arising solely through the lessee's negligence.

It must be borne in mind that each state has itso wn regulations with regard to the liability in such cases. Notwithstanding this, there is a remarkable unanimity of opinion amongst the authorities, as seen in the adjudicated cases, to the effect that liability for torts upon servants of lessee companies, arising solely from the negligence of the lessee, attaches to the lessee and not to the lessor. This has been held not only in states where legislative authority to lease has been been given (Swice v. Mand B. S. R. Co., Ct. of App., Ky., June 30, 1903; V. M. R. Co. v. Washington, 86 Va. 629; Banks v. Ga. R. & B. Co., 112 Ga. 655; Lee v. S. P. R. R. Co., 116 Cal. 97), but also in one state at least where such authority was not given. B. & O. and C. R. Co. v. Paul, 140 Ind. 23. The only case which can be found directly upon the point and holding to the contrary is Logan v. N. C. R. R. Co., 116 N. Car. 940. This case was referred to in the decision of the Illinois court, but it must be remembered that in North Carolina there is a positive legislative enactment providing that liability shall attach to the lessor company in cases of injuries to the employees of a lessee company, unless the lessor company is expressly absolved from liability. The law as held in the majority of the cases cited may be found in 2 Ell. R. R., 610; 1 Wood Rys., 25; Patt. Ry. Acc. Law, §§ 130-131. In 23 Am. and Eng. Enc. of Law, 785, after setting forth the rule in Illinois with respect to the liability of the lessor company to the general public, it is said: "The rule of liability which has just been stated does not apply to the lessee's servants who may be injured through the lessee's negligence."

An employee of a railroad company and a stranger do not stand in the same relation to the railroad company. The distinction between the two is drawn clearly in B. & O. & C. R. Co. v. Paul, 143 Ind. 23. The lessor by accepting its charter assumes the obligation of carrying passengers safely on its line. If it intrusts that duty to another company, and a passenger is injured, it is liable. It assumes also to operate its road with such degree of skill and care that the lives of those who have the right to pass on or near its tracks will not be jeopardized. Should the lessee inflict injuries upon wayfarers who cross its road, the lessor is liable. But the duty which a railroad company owes to its servant does not arise from the fact that the servant is one of the general public, but from the contract of service. If, therefore, the servant of a lessee is injured he must look to the lessee for redress, and not to the lessor, who can be held liable in such a case upon no principle of justice.

When recovery has been allowed against the lessor upon grounds of public policy, it has been under circumstances wholly different from those in the Illinois case. As indicated in the dissenting opinion, it has been because public policy demands that so far as the general public is concerned, a corporation should be held responsible for the proper exercise of the powers granted; or, because the corporation would be enabled to place the operation of its road in the hands of irresponsible parties, were their liability denied; or, because an injured party might be seriously hindered in obtaining his redress through ignorance as to what corporation to sue. The dissenting opinion shows clearly that none of these reasons apply to the servant of a lessee company. The servant needs no protection as one of the general public because he can enter the service or not as he chooses. He is not required to enter the service of an irresponsible company. If he is injured he certainly knows which company to sue.

It is noteworthy that three justices concur in the dissenting opinion, one of marked learning and ability, and apparently much more in line with the trend of decision on the subject of the liability of lessor railroad companies than that of the majority.—*Yale Law Journal.*

BOOK REVIEWS.

BALLARDS' LAW OF REAL PROPERTY, VOL. X.

No better set of law books on the subject of real property could be found than that edited by Emerson E. Ballard. Mr. Ballard's work is continually up to date by reason of the current volumes that are published with sufficient frequency to keep the profession advised of any important change in the law.

A very important feature of this work is its running alphabetical arrangement which makes the matter especially acdessible. Some of the important general questions discussed in the present volume are as follows: "Abstracts and Abstractors;" "Waste by Life Tenants;" "Timber Laws;" "Abutting Owners;" "Boundaries;" "Tax Titles;" "Surface Waters;" "Cemeteries;" "Community Property;" "Starting Fires;" "Riparian Ownership;" "Crops and Emblements;" "Dangerous Premises;" "Rents;" "Dedication;" "Records and Recording;" "Description of Real Estate;" "Real Estate Agents;" Public Lands;" "Estoppel;" "Plats and Surveys;" "Execution Sales of Real Estate;" "Party Walls;" "Mines;" "Fences;" "Fixtures;" "Homestead;" "Improvements;" "Real Property Rights of Married Women;" "Judicial Sales;" "Irrigation." These subjects will give an idea of the new and important questions of real property law discussed in the present volume. The discussion of each question is thorough and the citation of authorities apparently exhaustive.

Published by T. H. Flood & Company, Chicago, Ill.

CLEPHANE ON BUSINESS CORPORATIONS.

A work of great interest to corporation managers as well as to corporation lawyers is that entitled, "The Organization and Management of Business Corporations," by Walter C. Clephane, professor of the law of organization and management of corporations in the George Washington University of Washington, D. C. The purpose of this work is to furnish a detailed and practical guide through the successive stages essential to a valid and successful organization, and subsequent arrangement. The table of contents introduces the reader to a fair idea of the value of the contents of this work. Chapter I, deals with the Selection of a Domicile; Chapter II, Incorporators and Subscriptions to Stock; Chapter III, Certificate of Incorporation; Chapter IV, Essentials of Initial Meeting of Incorporators; Chapter V, Proceedings at First Meeting of Incorporators; Chapter VI, By-Laws; Chapter VII, First Meeting of Directors; Chapter VIII, Stock; Chapter IX, Meetings; Chap-

ter X, Amendment of Charter; Chapter XI, Reorganization.

We have examined this work very carefully and are clear and strong in our belief that it will become a very useful handbook to all lawyers who find themselves called upon to advise as to any practical matters affecting the actual management and organization of business corporations.

Printed in one volume of 246 pages and published by West Publishing Company, St. Paul, Minn.

BOOKS RECEIVED

A Treatise on the System of Evidence in Trials at Common Law, including the Statutes and Judicial Decisions of all Jurisdiesions of the United States. By John Henry Wigmore, Professor of the Law of Evidence in the Law School of Northwestern University. Volume IV. Boston, Little, Brown & Company, 1905. Sheep, pp. 759. Price $6.50. Review will follow.

HUMOR OF THE LAW.

A celebrated lawyer was in the habit of saying: "I always study the feesability of a case before I undertake it."

My horse went dead and my mule went lame,
And I lost six cows in a poker game;
Then a cyclone came on a summer's day,
And swept the house where I lived away;
And an earthquake came, when that was gone,
And swallowed the land that my house was on;
Then the tax collector he came around,
And charged me up with a hole in the ground.
—*Virginia Law Register.*

Judge Adams, the County Court Judge of Limerick, says the *Westminster Gazette*, is presiding at quarter sessions in Limerick. The other day a juror asked the judge to excuse him from serving on account of deafness. "Were you in court during my charge to the jury in the last case?" asked the judge. "Yes, yer Honner," replied the juror. "Did you hear it?" "Yes, yer Honner, I heard every word of it, but I couldn't make any sinse of it." The reply evoked a roar of laughter, in which Judge Adams joined. But he did not excuse that juror.

One of the most picturesque figures of the New York bar was the late Thomas Nolan, a lawyer whose witty retorts furnished subjects for merriment at many a lawyers' gathering. Now, Nolan was at one time counsel for a poor widow who was suing a construction company for the death of her husband. The case had been placed upon the "day calendar," but had been frequently postponed, and Mrs. Moriarity, by the time she had made her fifth call, was in an exceedingly disturbed frame of mind; consequently the tones of Nolan's rich brogue were more than usually fervid as he fought against the sixth adjournment. "I am sorry," said Justice Dugro, "but your opponent has shown me good cause for the adjournment, Mr. Nolan, and the case will therefore go over until to-morrow." "Very well, sor," said the barrister, sweetly, "but might I ask wan personal favor of this court?" "Certainly, sir, with pleasure." "Will Your Honor kindly sthep down to my office and just tell Mrs. Moriarity that you have adjourned the case?"

At one of the registration places in Alabama, says *The Bar*, Congressman Bankhead stood listening to the election officers testing a colored man's qualifications for exercising the right of suffrage. The negro was unusually intelligent, and one of the officials said quietly to the congressman, "That's a very smart y. He has answered every question correctly."

"Ask him to explain a writ of certiorari," suggested Mr. Bankhead.

This was done, and the negro, after scratching his head, said: "Deed, boss, I reckon you done got me. I doan know what dat is 'less it's somethin' to keep a nigger from votin'."

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ADMIRALTY—Collision with Beacon.—Admiralty jurisdiction of federal courts held to extend to libel against vessel for negligently colliding with a beacon built on piles driven into the bottom of the chanel.—United States v. Evans, U. S. S. C., 25 Sup. Ct. Rep. 46.

2. APPEAL AND ERROR—Absence of Bill of Exceptions.—In the absence of a bill of exceptions, errors occurring at the trial and the sufficiency of the evidence to sustain the judgment cannot be reviewed.—Froman v. Wilson, Colo 78 Pac. Rep. 615.

3. APPEAL AND ERROR—Instructions, Estoppel to Object Where Requested.—Defendant, having requested an instruction submitting the issue of discovered peril to the jury, was not entitled to object to such submission, on appeal.—Chicago, R. I. & T. Ry. Co. v. Williams, Tex., 83 S. W. Rep. 248.

4. APPEAL AND ERROR—Discretion of Court.—The striking out of proper testimony is no ground for reversal, where the witness afterwards repeated the same testimony.—Chicago City Ry. Co. v. Matthieson, Ill., 72 N. E. Rep. 443.

5. APPEAL AND ERROR—Restraining Execution Sale, Intervention.—An intervener, who files a cross-complaint asking affirmative relief without connecting himself with the pleadings between the plaintiff and defendant, cannot on appeal obtain any advantage from their pleadings.—White v. Besse, Cal., 78 Pac. Rep. 649.

6. APPEAL AND ERROR—Review of Condemnation

Proceedings.—Errors committed in sustaining refusal of trial court to give certain in struction or set aside assessment in condemnation cannot be considered on writ of error, in the absence of a sufficient bill of exceptions.—Metropolitan R. Co. v. McFarland, U. S. S. C., 25 Sup. Ct. Rep. 28.

7. ASSAULT AND BATTERY—Degree of Crime.—In a prosecution for assault, where the court submitted to the jury the issues of aggravated and of simple assault, the verdict and judgment should have specified the grade of crime.—Winzel v. State, Tex., 83 S. W. Rep. 187.

8. ASSIGNMENTS—Collection of Claim.—A client who had given his attorney assignment of a claim, that he might adjust conflicting claims, etc., held not entitled to revoke the authority after the settlements were made.—Foot v. Smythe, Colo., 78 Pac. Rep. 619.

9. ASSIGNMENTS — Contracts, Assignability. — A contract by a land company, which gave land to a manufacturer for a factory, to give to the factory free of cost natural gas, held not assignable.—Sargent Glass Co. v. Matthews Land Co., Ind., 72 N. E. Rep. 474.

10. BANKRUPTCY—Life Insurance Policy.—Where a life policy held by a bankrupt was of no actual value to his estate, it did not pass to his trustee as an asset, and on his death after a subsequent premium had become in default, but while it was by its terms continued in force, his administratrix is entitled to the proceeds.—Gould v. New York Life Ins. Co., U. S. D. C., E. D. Ark., 132 Fed. Rep. 927.

11. BANKRUPTCY—Preferences, Set-off.—To secure set-off in favor of creditor who, after receiving preference in good faith, extends further credit, which is allowed under Bankr. Act, § 60c, it is not necessary that the property should remain a part of the debtor's estate until the adjudication in bankruptcy.—Kaufman v. Tredway, U. S. S. C., 25 Sup. Ct. Rep. 33.

12. BENEFIT SOCIETIES — Warranties, Intoxicating Liquors.—Questions asked of insured in the application for a benefit certificate held to call for the extent of his use of intoxicants. — Endowment Rank Supreme Lodge K. P. v. Townsend, Tex., 83 S. W. Rep. 220.

13. BILLS AND NOTES—Advancements.—A note given by a son to his father was without consideration, where the father intended to give his son the money when he paid it.—Boblett v. Barlow, Ky., 83 S. W. Rep. 145.

14. BILL OF EXCEPTIONS—Compelling Judge to Sign. —Mandamus to compel a judge to sign a bill of exceptions awarded, notwithstanding the claim that there is no merit in the relator's claim of error.—State v. Gibson, Mo., 83 S. W. Rep. 472.

15. BONDS—Constitutional Law, Contractor's Bond.—A bond given by a contractor pursuant to an unconstitutional statute held not a valid common-law obligation. —W. W. Montague & Co. v. Furness, Cal., 78 Pac. Rep. 640.

16. CARRIERS—Elevators, Degree of Care.—An owner and operator of a passenger elevator is bound to exercise the highest degree of care consistent with practical conditions.—Edwards v. Burke, Wash., 78 Pac. Rep. 610.

17. CARRIERS—Injury to Goods, Measure of Damages.—Where property is damaged in transportation, the owner cannot refuse to accept it and sue for its market value, but may recover only for the injury.—Gulf, C. & S. F. Ry. Co. v. Everett & Long, Tex., 83 S. W. Rep. 257.

18. CARRIERS—Transportation of Live Stock.—A carrier held entitled to contract with the owner of live stock that such owner shall see that the stock is properly loaded.—Texas & P. Ry. Co. v. Edins, Tex., 83 S. W. Rep. 253.

19. CHATTEL MORTGAGES — Removal of Property to Another State.—The lien of a chattel mortgage executed in Indiana held not displaced by the removal of the property to Arkansas.—F. E. Creelman Lumber Co. v. J. A. Lesh & Co., Ark., 83 S. W. Rep. 320.

20. CHATTEL MORTGAGES—Specified Articles.—A chattel mortgage covering a series of specified articles owned by a tradesman, and not his general stock, was not invalidated by the provision authorizing the mortgagor to use and enjoy the same before default.—Wilson v. Jones, Colo., 78 Pac. Rep. 622.

21. CONSPIRACY—Deprivation of Membership in Fraternal Order.—In action against fraternal order for damages for conspiring to deprive plaintiff of her membership by the dissolution of local lodge, proof held insufficient to show that defendant's officers acted with culpable conduct towards plaintiff.—Grand Lodge Order of Hermann's Sons of Texas v. Schuetze, Tex., 83 S. W. Rep. 241.

22. CONSTITUTIONAL LAW — Statutes, Prospective Retrospective.—When the bar of limitations has once attached, the legislature cannot by an amendatory act revive the action.—Edelstein v. Carlile, Colo., 78 Pac. Rep. 680.

23. CONTRIBUTION—Joint Tort Feasor. — An active wrongdoer, whose negligent acts co-operate to bring about the injury, is not entitled to contribution as against a joint tort-feasor.—Robertson v. Trammell, Tex., 83 S. W. Rep. 258.

24. CORPORATIONS — Property Exchanged for Stock, Overvaluation.—Where stock is issued by directors for property taken at an overvaluation, it is competent, at the instance of creditors, to compel the stockholder to respond for the difference between the actual value of such property and the par value of the stock.—Macbeth v. Banfield, Oreg., 78 Pac. Rep. 693.

25. CORPORATIONS—Servant's Malicious Act Within Scope of Employment.—Where a servant of a corporation acts maliciously within the scope of his authority, the corporation is chargeable with malice.—Dwyer v. St. Louis Transit Co., Mo., 83 S. W. Rep. 303.

26. CORPORATIONS — Transactions with Directors.—The validity of a transfer of corporate property to its directors in settlement of their claims is to be determined in the light of conditions existing at the date of the transfer.—Heidbreder v. Superior Ice & Cold Storage Co., Mo., 83 S. W. Rep. 466.

27. CORPORATIONS—Unpaid Subscriptions.—A corporation may dispose of its assets as it sees fit while it is a going concern, and it is only in case of insolvency that unpaid stock subscriptions become trust fund for creditors.—Macbeth v. Banfield, Oreg., 78 Pac. Rep. 693.

28. CRIMINAL LAW—Theft, Appropriation of Money.—It is proper to charge theft from the person and theft of property over the value of $50 in separate counts in the same indictment.—Flynn v. State, Tex., 83 S. W. Rep. 206.

29. CRIMINAL TRIAL — Accused Reclining on Cot.—Where accused reclined on a cot during the trial and had apparent difficulty in breathing and testified that he could not help it, the matter being immaterial, held no basis for impeachment.—Miller v. State, Tex., 83 S. W. Rep. 393.

30. CRIMINAL TRIAL — Argument Calling Accused a Liar.—In a criminal case, it is not error for the district attorney in argument to call accused a liar, in referring to his testimony.—Miller v. State, Tex., 83 S. W. Rep. 393.

31. CRIMINAL TRIAL—Evidence of Extraneous Crimes. —On prosecution for larceny of horse, admission of evidence of extraneous crimes held not cause for reversal.—Buck v. State, Tex., 83 S. W. Rep. 387.

32. CRIMINAL TRIAL — Homicide, Failure to Request Charge of Insanity.—Accused held not entitled to complain of the court's failure to charge on insanity produced by the use of intoxicating liquors, in the absence of a request so to charge or an exception to the refusal thereof.—Dyer v. State, Tex., 83 S. W. Rep. 192.

33. CRIMINAL TRIAL—Homicide, Guarding Jury Room. —Where a jury in a murder case were properly locked up, a verdict of guilty was not invalidated by the fact that the sheriff did not guard the outside of the jury room continuously.—State v. Neighbaker, Mo., 83 S. W. Rep. 523.

34. CRIMINAL TRIAL—Homicide, Suspension of Sentence.—Where a special term was called to prosecute

defendant for homicide, held that he was entitled to the two days' delay between verdict and judgment, granted by Criminal Code, § 283.—Powers v. Commonwealth, Ky., 83 S. W. Rep. 146.

35. CRIMINAL TRIAL—Misconduct of Jury.—Conduct of a juror in telling the jury in the jury room that defendant had hit prosecutor with an ax handle on a former occasion, held ground for a new trial.—Mann v. State, Tex., 83 S. W. Rep. 135.

36. CRIMINAL TRIAL — Witness Accomplice. — Mere knowledge or belief of the commission of an offense, and the concealment of the fact, does not render a witness an accomplice.—Martin v. State, Tex., 83 S. W. Rep. 390.

37. DAMAGES—Earning Capacity of Plaintiff.—In an action for injuries, a blacksmith's testimony that the value of plaintiff's labor "would average five dollars a day" was proper.—City of Dallas v. Moncton, Tex., 83 S. W. Rep. 431.

38. DAMAGES—Negligence, Rule as to Interest.—Rule as to interest as an element of damage in an action for negligence, denied.—Western Union Tel. Co. v. Garner, Tex., 83 S. W. Rep. 433.

39. DEEDS—Mortgages.—Defendant in ejectment on showing that his deed to plaintiff was in fact but a mortgage, held not entitled to contradict the amount of consideration stated in the instrument.—Bryan v. Hobbs, Ark., 83 S. W. Rep. 341.

40. DEPOSITIONS—Irregularities in Return.—A deposition which was neither delivered into court in person, nor sealed and addressed to the clerk, as required by statute, is not admissible as evidence.—The Saranac, U. S. D. C., W. D. N. Y., 132 Fed. Rep. 936.

41. DESCENT AND DISTRIBUTION—Advancements, Use of Land.—The use of land, which is enjoyed by a child, must be accounted for as an advancement.—Boblett v. Barlow, Ky., 83 S. W. Rep. 145.

42. DIVORCE—Awarding Alimony.—The awarding of alimony and the fixing of the amount thereof rest in the discretion of the court.—Read v. Read, Utah, 78 Pac. Rep. 675.

43. EJECTMENT—Adverse Possession.—Actual, exclusive and adverse possession for more than 20 years is sufficient to enable the possessor to maintain ejectment.—City of Clinton v. Frankfort, Ky., 83 S. W. Rep. 142.

44. ELECTIONS—Validity of Ballot.—Where election officers assist the voter in preparing his ballot, that they did not take the oath prescribed held not to invalidate his vote.—Huston v. Anderson, Cal., 78 Pac. Rep. 626.

45. EMINENT DOMAIN—Construction of Sidewalk.—In a suit by a city to enforce a lien for the construction of a sidewalk, held, that there was no authority for a decree charging defendant with the cost of the walk and plaintiff with the value of the land taken for the walk.—City of Clinton v. Franklin, Ky., 83 S. W. Rep. 140.

46. EMINENT DOMAIN—Damages, Persons Entitled to Award.—A lessor held entitled to the award for expenses in changes in a building in proceedings for the award of damages for a change of grade of streets.—City of St. Louis v. Nelson, Mo., 83 S. W. Rep. 271.

47. ESTOPPEL—Bonds, Payment of Salary.—A board of education held not estopped to sue on a bond executed by its clerk to obtain payment of salary pending a contest for his office.—McLaughlin v. Board of Education of City of Covington, Ky., 83 S. W. Rep. 560.

48. ESTOPPEL—Sidewalk, Unlawful Taking of Land.—A witness, in an action against a city for unlawful construction of a sidewalk on plaintiff's land, held estopped to assert any claim in the land as against the city.—City of Clinton v. Franklin, Ky., 83 S. W. Rep. 142.

49. EVIDENCE—Certified Copy of Record.—A certified copy of the record of an instrument, purporting to be the original certificate held not admissible as evidence in deraignment of title from the state.—Arbuckle v. Matthews, Ark., 83 S. W. Rep. 326.

50. EVIDENCE—Delay in Transporting Cattle.—Expert evidence that a delay of two hours in the movement of cattle by a connecting carrier was not unreasonable held admissible in an action for damages from such delay.—Chicago, R. I. & T. Ry. Co. v. Kapp, Tex., 83 S. W. Rep. 233.

51. EVIDENCE—Market Value.—Acquaintance with the market value of property in the neighborhood of property inquired about qualifies a witness to testify as to its value.—Schrodt v. City of St. Joseph, Mo., 83 S. W. Rep. 543.

52. EVIDENCE—Res Gestae.—Evidence that, 15 minutes after the accident, plaintiff was sitting on the side of defendant's track, groaning and complaining, and seemed to be in pain, held admissible.—Chicago, R. I. & T. Ry. Co. v. Williams, Tex., 83 S. W. Rep. 248.

53. EVIDENCE—Telegrams, Message Sent.—A reply telegram delivered to the telegraph company held the original for evidentiary purposes, and not the telegram delivered by the telegraph company to the addressee.—Bond v. Hurd, Mont., 78 Pac. Rep. 579.

54. EXECUTORS AND ADMINISTRATORS — Attorney's Fees.—An estate held not chargeable with expenses of administrator incurred in advising with counsel in respect to interests and demands antagonistic to the claims of the heirs.—*In re* Davis' Estate, Mont., 78 Pac. Rep. 704.

55. EXECUTORS AND ADMINISTRATORS—Attorney's Fees.—An attorney cannot maintain a suit in a probate court against a decedent's estate for legal services rendered by contract with the executor.—Parker & Parker v. Mayor, Ark., 83 S. W. Rep. 324.

56. EXECUTORS AND ADMINISTRATORS—Claims Against Estate.—An action held to lie against an executor, without presentation of claim against an estate, for specific property belonging to plaintiff.—Sprague v. Walton, Cal., 78 Pac. Rep. 645.

57. FIRE INSURANCE—Collateral Security.—Where a vendor retained an insurance policy as collateral security for the unpaid part of the price, he was bound to credit the amount received for a loss on the debt of the vendee.—Mattingly v. Springfield Fire & Marine Ins. Co., Ky., 83 S. W. Rep. 577.

58. FIRE INSURANCE—Proof of Loss, Waiver.—The conduct of an adjuster of the insurer held admissible to show a waiver of the stipulation as to proof of loss.—Exchange Bank of Webb City v. Thuringia Ins. Co., Mo., 83 S. W. Rep. 534.

59. FRAUD—Pleadings, Proof and Amendment.—A purchaser, suing for fraudulent representations made by the vendor as an inducement for the sale, cannot recover by showing a mutual mistake of the parties.—Connell v. El Paso Gold Min. & Mill. Co., Colo., 78 Pac. Rep. 677.

60. FRAUD—Sale of Land, Remedies.—That a purchaser of land elected not to rescind for fraud on discovering the same held not necessarily to preclude him from recovering damages therefor in an action for deceit.—Guinn v. Ames, Tex., 83 S. W. Rep. 232.

61. FRAUDS, STATUTE OF—Parol Promise to Lease.—A parol promise to execute a lease for a term of years, on which defendant acted in purchasing a stock of goods, held insufficient to estop plaintiff from subsequently denying the enforceability of such promise.—Dechenbach v. Rima, Oreg., 78 Pac. Rep. 666.

62. FRAUDULENT CONVEYANCE—Deed from Husband to Wife.—A voluntary conveyance of land by a solvent husband to his wife held not fraudulent as against a creditor whose debt was well secured by other property.—Polk County Nat. Bank v. Scott, U. S. C. C. of App., Fifth Circuit, 132 Fed. Rep. 897.

63. FRAUDULENT CONVEYANCE—Deed to Wife.—A husband being neither insolvent nor in contemplation of insolvency, a deed of his land to his wife is valid, though made without consideration.—White v. Besse, Cal., 78 Pac. Rep. 649.

64. GARNISHMENT — Negotiable Notes.—Notes in hands of maker held to have lost their negotiability,

rendering them subject to garnishment by creditor of payee.—Hutcheson v. King, Tex., 83 S. W. Rep. 215.

65. HOMICIDE—Right to Defend Brother from Assault.—One who sees his brother assaulted by another has the same right to resist the assault, and is entitled to the same defenses as the person assaulted.—Palmer v. State Tex., 83 S. W. Rep. 202.

66. HOMICIDE—Self-Defense.—In a prosecution for homicide, defendant held entitled to a charge on self-defense, unqualified by a charge on provoking the difficulty; the evidence raising question of provoking difficulty.—Goodman v. State, Tex., 83 S. W. Rep. 196.

67. HUSBAND AND WIFE—Surviving Wife, Homestead.—A surviving wife held not to waive right to a homestead by qualifying as executrix.—*In re* Firth's Estate, Cal., 78 Pac. Rep. 643.

68. INDEMNITY—Joint Tort Feasors.—Where two parties were liable as wrongdoers, but one of them took no part in the wrongful act, he was entitled to indemnity against the active wrongdoer.—Robertson v. Trammell, Tex., 83 S. W. Rep. 258.

69. INJUNCTION—Canvassing Returns, Local Option Election.—An injunction does not lie to restrain the commissioners' court from canvassing the returns and publishing notice of the result of a local option election.—Robinson & Watson v. Wingate, Tex., 83 S. W. Rep. 182.

70. INTOXICATING LIQUORS—Local Option Election.—An order made by the county court of a county for a local option election may be amended *nunc pro tunc*.—State v. Bird, Mo., 83 S. W. Rep. 284.

71. JUDGMENT—Decree of Distribution.—A party who suffers no loss by a decree of distribution of the proceeds of the sale of corporation property has no right to have the same modified.—Heidbreder v. Superior Ice & Cold Storage Co., Mo., 83 S. W. Rep. 469.

72. JUDGMENT—Suit to Set Aside.—A recovery in an action against a sheriff for a false return of service of summons held a bar to a suit to set aside a default judgment based on the return.—Smoot v. Judd, Mo., 83 S. W. Rep. 481.

73. JUDGMENT—Tax Title.—A decree confirming a tax title is conclusive when the defects complained of were mere irregularities, which did not invalidate the decree on collateral attack.—Arbuckle v. Matthews, Ark., 83 S. W. Rep. 326.

74. JUDGMENT—Validity.—Where a motion to reinstate a cause after dismissal at a former term was agreed to, and the court acted on facts not clearly appearing, it will be assumed that it acted within its power.—Logan v. Robertson, Tex., 83 S. W. Rep. 395.

75. JUDICIAL SALES—Rescission.—On rescission of a judicial sale, the purchaser should be charged with the fair rental value while in possession.—Hall v. Dineen, Ky., 83 S. W. Rep. 120.

76. JURY—Competency of Juror.—That a juror had performed some clerical work for a city held insufficient to sustain a challenge for implied bias in an action against the city.—Swope v. City of Seattle, Wash., 78 Pac. Rep. 607.

77. JUSTICES OF THE PEACE—Appeal Parties.—One of several defendants in a justice's court may appeal therefrom without joining the co-defendant.—Jesse French Piano & Organ Co. v. Mears, Tex., 83 S. W. Rep. 401.

78. JUSTICES OF THE PEACE—Jurisdiction.—A superior court will not generally award certiorari to correct transcript on appeal from justice court, where the imperfection is caused by the neglect of the appellant.—Hager v. Knapp, Oreg., 78 Pac. Rep. 671.

79. LANDLORD AND TENANT—Gas Leases, Deed Not of Record.—Where a deed from a lessor was not recorded, and the lessee knew nothing of it, the latter was not in default for paying rent to the original lessor.—Indiana Natural Gas & Oil Co. v. Lee, Ind., 72 N. E. Rep. 492.

80. LANDLORD AND TENANT—Lease, Improvements.—A lessee under a renewal lease held entitled to remove only the improvements erected during the renewal term.—City of St. Louis v. Nelson, Mo., 83 S. W. Rep. 271.

81. LIBEL AND SLANDER—Corporations, Libel *per se*.—A publication beginning: "Hints to Advertisers. This is from the fake trade journal published at St. Louis"—is libelous *per se*.—Midland Pub. Co. v. Implement Trade Co., Mo., 83 S. W. Rep. 298.

82. LIFE ESTATES—Adverse Possession.—Where land was conveyed to a wife and son jointly, and on her death the husband was entitled by curtesy to the wife's part his occupancy of the son's part was not adverse to the son.—City of Clinton v. Franklin, Ky., 83 S. W. Rep. 142.

83. LIFE ESTATES—Construction of Will.—Where a widow and executrix sold personalty and invested in real estate, the taking of title in the name of herself and one of the children held unauthorized.—Dee v. Dee, Ill., 72 N. E. Rep. 429.

84. LIFE INSURANCE—Breach of Warranty, Attendance by Physician.—Failure of insured to disclose illness in application held breach of warranty, voiding a life insurance policy issued thereon.—Mutual Reserve Fund Life Ass'n v. Cotter, Ark., 83 S. W. Rep. 321.

85. LIFE INSURANCE—Laws Applicable.—Provision of life policy that it should be construed according to the laws of New York held not to constitute the statutes of that state the laws by which its effect is to be determined.—Mutual Reserve Fund Life Ass'n v. Minehart, Ark., 83 S. W. Rep. 323.

86. LIFE INSURANCE—Presumption Against Suicide.—Where the dead body of the insured is found under circumstances indicating his death from negligence, accident or suicide, the presumption of law is against suicide.—American Benev. Ass'n v. Stough, Ky., 83 S. W. Rep. 126.

87. LIFE INSURANCE—Temporary Insurance.—An application for life insurance and the soliciting agent's receipt held not to constitute a contract for temporary insurance pending the acceptance or rejection of the application.—Cooksey v. Mutual Life Ins. Co., Ark., 83 S. W. Rep. 317.

88. LIMITATION OF ACTIONS—Disability of Cestui que Trust.—Where a suit by a trustee is barred by limitations, the right of the *cestui que trust* to sue is also barred, though he was under a disability at the time the cause of action arose.—Wiess v. Goodhue, Tex., 83 S. W. Rep. 178.

89. LIMITATION OF ACTIONS—Suspension of Statute.—At the death of a maker of a note, limitations are succeeded by the two-year statute of nonclaim, running from the grant of administration.—Ross v. Frick Co., Ark., 83 S. W. Rep. 343.

90. MALICIOUS PROSECUTION—Wrongful Arrest of Passenger.—The act of a street railway conductor in causing the wrongful arrest of a passenger held an act in the discharge of his duties, making the company liable therefor.—Dwyer v. St. Louis Transit Co., Mo., 83 S. W. Rep. 303.

91. MASTER AND SERVANT—Duty to Warn Inexperienced Servant.—It is the duty of a master to warn a servant, even of patent dangers, which the servant by reason of youth and inexperience does not appreciate.—Ford v. Bodcaw Lumber Co., Ark., 83 S. W. Rep. 346.

92. MASTER AND SERVANT—Inexperience of Servant.—A servant held to have known that, if he got underneath an overhanging rock and struck it with a sledge hammer, portions of it would necessarily fall.—Hightower v. Gray, Tex., 83 S. W. Rep. 254.

93. MECHANIC'S LIENS—Materialman, Estoppel.—That a materialman became surety on the contractor's bond to save the owner harmless from mechanic's lien held not to estop the materialman from suing to establish a lien, in the absence of proof of injury to the owner.—Badger Lumber Co. v. Muehlebach, Mo., 83 S. W. Rep. 546.

94. MINES AND MINERALS—Gas Lease, Breach by Lessee.—Where a lease provided for the deposit of rentals

in a certain bank, such a deposit was a payment, and an averment of nonpayment implied that the rent was not deposited.—Indiana Natural Gas & Oil Co. v. Lee, Ind., 72 N. E. Rep. 492.

95. MORTGAGES—Foreclosure, Duty of Purchaser to Take Title.—The purchaser at mortgage foreclosure sale held not required to take the title, there being a mere allegation in the petition that the mortgagor left no heirs or kindred, and a default but no proof.—Montz v. Schwabacher, Ky., 83 S. W. Rep. 569.

96. MORTGAGES — To Secure Future Advances. — A grantee in a deed of trust to secure future advances for the making of a crop held not limited to advances made prior to the date when such crop is usually harvested.—Hamilton v. Rhodes, Ark., 83 S. W. Rep. 351.

97. MUNICIPAL CORPORATIONS—Damages, Change of Street Grade.—Mortality tables, showing the expectancy of the owners of certain property alleged to have been damaged by a change of street grade, held inadmissible in an action to restrain the same and to recover damages therefor.—Swope v. City of Seattle, Wash., 78 Pac. Rep. 607.

98. MUNICIPAL CORPORATIONS—Electric Lighting Plant. —A city may conduct an electric lighting plant in the manner which promises the greatest benefit to it and its inhabitants, and the reasonable discretion of the city council in such matter will not be interfered with by the court.—City of Henderson v. Young Ky., 83 S. W. Rep. 583.

99. MUNICIPAL CORPORATIONS—Elevating Street Grade. —Where a city passes an ordinance for grading a street and it is done without ascertaining and paying the damages, it is liable to a property owner injured thereby.—Schrodt v. City of St. Joseph, Mo., 83 S. W. Rep. 543.

100. MUNICIPAL CORPORATIONS—Public Work, Extension of Time.—City held to have no power to validate tax bills for street paving by extending the time stipulated for completion of the work after the contract had been let.—Spalding v. Forsee, Mo., 83 S. W. Rep. 540.

101. MUNICIPAL CORPORATIONS—Street Improvement, Tax Bills.—In a suit to charge land with tax bills, it could not be assumed that a certain item included work which had been paid for by the city.—Perkinson v. Schnake, Mo., 83 S. W. Rep. 301.

102. MUNICIPAL CORPORATIONS — Tax to Maintain Public Library.—A tax to maintain a public library held not one for education, within Const., § 184, required to be authorized at an election.—Ramsey v. City of Shelbyville, Ky., 83 S. W. Rep. 116.

103. NEW TRIAL—Verdict Against Evidence.—The trial court has a large discretion in granting a new trial on the ground that the verdict is against the weight of the evidence.—Schuette v. St. Louis Transit Co., Mo., 83 S W. Rep. 297.

104. PARTITION—Requisites of Judgment. — A judgment in partition, directing certain land which had been sold to be charged to two of the parties, held not invalidated for failure to contain a description of such land.—Hanrick v. Hanrick, Tex., 83 S. W. Rep. 181.

105. PAYMENT—Application.—A grantee in a deed of trust securing a note and open account held entitled to credit payments on the open account instead of the note, in the absence of instructions by the debtor.—Hamilton v. Rhodes, Ark., 83 S. W. Rep. 351.

106. PAYMENT—Physician's Services.—In an action for physician's services, defendant held not entitled to recover payments made, in the absence of proof that plaintiff had deceived him as to his right to practice medicine.—Gaither v. Lindsey, Tex., 83 S. W. Rep. 225.

107. PLEADING—Demurrer, Waiver.—Where defendan answered after demurrers to plaintiff's bill to set aside certain tax deeds had been overruled, he thereby waived his demurrer.—Glos v. Hanford, Ill., 72 N. E. Rep. 439.

108. PLEADING—Sufficiency.—Where an instrument is not the basis of the suit, a copy of it which is made an exhibit cannot be considered to aid the averments of the complaint.—Indiana Natural Gas & Oil Co. v. Lee, Ind., 72 N. E. Rep. 492.

109. PRINCIPAL AND AGENT—Authority to Collect Before Maturity of Note.—An agent to collect a note when it becomes due has no authority to receive payment before maturity.—Cunningham v. McDonald, Tex., 83 S. W Rep. 372.

110. PRINCIPAL AND AGENT—Ratification, Contract of Agent.—Contract of agent on behalf of his principal, which accepted the benefit thereof, held ratified by the principal, so as to render it liable thereon.—Evans-Snider-Buel Co. v. Hilje, Tex., 83 S. W. Rep. 208.

111. PRINCIPAL AGENT—Return of Service of Summons.—Where the sheriff's return of service of summons is amended the amendment relates back to the date of the service, and is conclusive on the parties except in a direct suit.—Smoot v. Judd, Mo., 83 S. W. Rep. 481.

112. PRINCIPAL AND SURETY—Traveling Salesman, Sale of Samples.—A traveling salesman's contract held not to authorize him to sell his samples, and hence a sale by him conferred no title.—Hibbard, Spencer, Bartlett & Co. v. Stein, Oreg., 78 Pac. Rep. 665.

113. PROHIBITION—Jurisdictional Defects.—An application for change of venue does not deprive the court of jurisdiction, and its action, if wrong, is not ground for a writ of prohibition.—State v. Evans, Mo., 83 S. W. Rep. 447.

114. PUBLIC LANDS—Grant to State, Construction.—In a grant by the government of a section of land, "to embrace the buildings thereon," the word "embrace" means to enclose as by surrounding or encircling.—Story v. Woolverton, Mont., 78 Pac. Rep. 589.

115. PUBLIC LANDS—Sale of School Lands.—A sale of school lands, the title to which was in a county, in trust for the school fund, under Const. art 7, § 6, by an agent to whom the commissioners' court delegated the county's power, held void.—Logan v. Stephens County, Tex., 83 S. W. Rep. 365.

116. RECEIVERS—Contracts, Assignability.—Where a contract is not assignable, a receiver of one of the parties does not by a transfer of the contract confer rights on the transferee.—Sargent Glass Co. v. Matthews Land Co., Ind., 72 N. E. Rep. 474.

117. REFORMATION OF INSTRUMENTS—Description in Deed.—In a proceeding to correct a description in a deed of trust and foreclose the same, the holder of a subsequent deed of trust held entitled to intervene and obtain similar relief.—Scott v. Gordon, Mo., 83 S. W. Rep. 550.

118. RELIGIOUS SOCIETIES—Presiding Officer.—Decision of the presiding officer of a church, from which no appeal was taken, that the body stood adjourned, held conclusive on the church, and could not be reviewed by the courts.—Gipson v. Morris, Tex., 83 S. W. Rep. 226.

119. REPLEVIN—Nonstatutory Bonds.—Replevin bond held not a statutory bond, so that it was error to render summary judgment against the sureties thereon.—Mariany v. Lemaire, Tex., 83 S. W. Rep. 215.

120. REPLEVIN—Title to Property Seized.—In claim and delivery for property wrongfully seized under execution, defendant could, under a general denial, show that a sale under which plaintiff claimed was void.—Gallick v. Bordeaux, Mont., 78 Pac. Rep. 583.

121. SALES—Breach of Warranty.—The measure of damages for breach of warranty of a refrigerator, causing a loss of meat placed therein, is the value of the meat lost.—C. H. Dean Co. v. Standifer, Tex., 83 S. W. Rep. 230.

122. SALES—Breach of Warranty.—Where the buyer disposed of an engine after judgment for return to the seller because of breach of warranty, he should account to the seller for the proceeds of sale.—E. T. Kenney Co. v. Anderson, Ky., 83 S. W. Rep. 581.

123. SALES — Chattel Mortgage. — Sale of a carriage which was returned to the vendor for business reasons held not void as against a mortgagee from the vendor,

under Rev. St. 1899, § 3410.—Reynolds v. Beck, Mo., 83 S. W. Rep. 292.

124. SALES—Failure to Deliver.—The measure of the vendee's damages for the vendor's failure to deliver goods determined.—Woldert Grocery Co. v. Veltman, Tex., 83 S. W. Rep. 224.

125. SEAMEN—Failure to Furnish Proper Treatment.—A vessel held not in fault for not deviating from her course to take an injured seaman to a port, where the port of destination was reached in 48 hours, but liable for failure to then furnish the seaman with proper treatment and care.—The Svaeland, U. S. D. C., E. D. Va., 132 Fed. Rep. 932.

126. SHERIFFS AND CONSTABLES — Execution, Non-Official Person.—A constable has no authority to appoint a deputy or substitute to make a sale under an execution.—Stacy v. Bernard, Colo., 78 Pac. Rep. 615.

127. SHIPPING—Injury to Stevedore. — Where a libel alleges generally as the ground of a vessel's liability for the injury of a stevedore that a hatch cover was improperly constructed, libelant may properly be given leave to amend during the trial by setting out the particulars in which the construction is claimed to have been defective.—The Saranac, U. S. D. C., W. D. N. Y., 132 Fed. Rep. 936.

128. STATUTES—Construction.—Remedial statutes will be given a retrospective effect, when an intention to have them so operate is clearly expressed.—Edelstein v. Carlile, Colo., 78 Pac. Rep. 680.

129. STATUTES — Construction, Re-enacted Statutes.—Where the legislature re enacts a statute formerly in force, it will be presumed that the legislature intended it to have the construction formerly placed on the statute by the court of last resort.—Supreme Council A. L. H. v. Anderson, Tex., 83 S. W. Rep. 207.

130. STATUTES — Municipal Corporations, Powers. — Governmental powers given a city are to be strictly construed, but powers given it for its private advantage are to be construed by the same rules that govern individuals or coporations.—City of Henderson v. Young, Ky., 83 S. W. Rep. 583.

131. STREET RAILROADS—Care Required Toward Passengers.—A street railroad owes to its passengers a very high degree of care and foresight on the part of its operatives.—Snider v. Chicago & A. Ry. Co., Mo., 83 S. W. Rep. 530.

132. STREET RAILROADS—Excessive Speed.—The running of cars in a city at a speed greater than that allowed by ordinance is negligence *per se*, and the court may so tell the jury.—Dallas Consol. Electric St. Ry. Co. v. Ison, Tex., 83 S. W. Rep. 408.

133. TAXATION—Church Property, Charities.—A trust fund devoted to the propagation of the principles of primitive Christianity as taught by the Christian church is not a "purely public charity," within Const. § 170, exempting such charities from taxation.—Commonwealth v. Thomas, Ky., 83 S. W. Rep. 572.

134. TRIAL—Arguments of Counsel.—Defendant's counsel, having indulged in improper argument, held not entitled to object to an improper reply thereto by plaintiff's counsel.—International & G. N. R. Co. v. Goswick, Tex., 83 S. W. Rep. 423.

135. TROVER AND CONVERSION—Judgment for Value o Material.—A claimant of land cannot complain of a judgment against him for the value of material removed therefrom because his purpose was to prevent the real owner from gaining possession.—Logan v. Robertson Tex., 83 S. W. Rep. 395.

136. VENDOR AND PURCHASER—Ejectment, Default of Purchaser.—A vendor held not entitled to maintain ejectment against the purchaser for failure to pay the balance of the purchase money, without at least showing an abandonment of the contract of sale.—Brixen v. Jorgensen, Utah, 78 Pac. Rep. 674.

137. VENDOR AND PURCHASER—Notice.—A recital in a deed that the land had been conveyed by A to S and then to G he to put a subsequent purchaser from the heirs of S on inquiry to ascertain whether the land had not been conveyed by S to G.—Masterson v. Harris, Tex., 83 S. W. Rep. 428.

138. VENDOR AND PURCHASER—Trespass to Try Title.—Where a corporation made an executory conveyance of real estate, receiving vendor's lien notes for the price, it retained the title, which passed to the grantee of its assets under a deed of the corporation's receiver.—Austin v. Lauderdale, Tex., 83 S. W. Rep. 413.

139. VENUE—Actions.—Where plaintiff alleged two causes of action which defendant was entitled to have tried in his own county, plaintiff could not defeat such right by joining a third cause of action triable in the county where the suit was brought.—Bond v. Hurd, Mont., 78 Pac. Rep. 579.

140. VENUE—Affidavits.—An order granting change of venue will not be disturbed, though the names of the witnesses on whose account the change was asked was not specified in the affidavits.—Grant v. Bannister, Cal., 78 Pac. Rep. 653.

141. VENUE—Transcript of Evidence.—On change of venue, transcript of original papers by clerk for use in other court held unnecessary.—Gerhart Realty Co. v. Weiter, Mo., 83 S. W. Rep. 278.

142. WATERS AND WATER COURSES—Irrigation Ditch, Adverse User.—One, by mere adverse use of government land in connection with an irrigation ditch, held to acquire no right.—Boglino v. Giorgetta, Colo., 78 Pac. Rep. 612.

143. WILLS—Residuary Clause.—The residuary clause of a will fails where no beneficiary is named therein and there is no person competent to take as such beneficiary.—Lehnhoff v. Theine, Mo., 83 S. W. Rep. 469.

144. WILLS—Undue Influence.—On the contest of a will of a married woman, held proper to admit in evidence the will of her former husband, and evidence as to what property she received from him.—Floore v. Green, Ky., 83 S. W. Rep. 133.

145. WITNESSES—Burglary, Cross Questioning.—In a criminal prosecution, it was not error to permit a witness to be asked if he was a stranger in the county, and did not have an uncle living there.—Archibald v. State, Tex., 83 S. W. Rep. 189.

146. WITNESSES—Cross-Examination.—Where a witness is asked on cross-examination if he did not make a certain statement, not relevant to any matter brought out on his direct examination, and denies it, his denial is binding on the party asking the question.—The Saranac, U. S. D. C., W. D. N. Y., 132 Fed. Rep. 936.

147. WITNESSES—Evidence as to Advice of Lawyer.—In an action for personal injuries, evidence as to advice of lawyer in relation to a prior injury of the same character held inadmissible.—City of Dallas v. Muncton, Tex., 83 S. W. Rep 431.

148. WITNESSES—Impeachment.—If a witness, sought to be impeached by a prior inconsistent statement, neither directly admits nor denies the statement, but gives an indirect answer, it is proper to show the prior statement.—Chicago City Ry. Co. v. Matthieson, Ill., 72 N. E. Rep. 443.

149. WITNESSES—Impeachment, Prior Testimony.—A justice of the peace, after testifying that a witness did not give similar testimony at the examining trial that was given on the trial, held erroneously permitted to testify that the previous testimony of the witness was unreasonable.—Dyer v. State, Tex., 83 S. W. Rep. 192.

150. WITNESSES—Limitation of Impeaching Testimony.—On a criminal prosecution, it was error to admit evidence that one of defendant's witnesses had been indicted for playing cards.—Webb v. State, Tex., 83 S. W. Rep. 394.

151. WITNESSES—Notice of Source of Title.—A purchaser of land, having actual notice of conveyance by the common source of title, not shown by the records, held not entitled to rely on such records.—Masterson v. Harris, Tex., 83 S. W. Rep. 428.